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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 921.

THE COUNTY OF DAKOTA, PLAINTIFF IN ERROR,

vs.

HENRY H. GLIDDEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED SEPTEMBER 10, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Pleas before the Hon. Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, sitting in the circuit court of the United States for the eighth judicial circuit and district of Nebraska, at the term of May, A. D. 1882.

Be it remembered that on the 17th day of December, 1880, a petition was filed in the office of the clerk of said circuit court; which said petition is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

HENRY H. GLIDDEN *vs.* THE COUNTY OF DAKOTA.

Henry H. Glidden, plaintiff, complains of the County of Dakota, in Nebraska, defendant, and says that the said plaintiff is, and for five years and more last past has been, a citizen of the State of Illinois, and that said defendant is, and for ten years and more last past has been, a municipal corporation created and organized under and by virtue of the laws of the State of Nebraska, and is a citizen thereof.

On the 23rd day of November, 1875, at a session of the board of county commissioners of said county it was resolved that the following proposition be submitted to the legal voters of Dakota county for their adoption or rejection, to wit:

Shall the county of Dakota, State of Nebraska, issue and donate to the Covington, Columbus and Black Hills Railroad Company sixty-five thousand dollars ($65,000), and in addition thereto
2 (for the extension of the road) the additional sum of thirty thousand dollars ($30,000) in coupon bonds of the said county, dated January 1st, 1876, and payable twenty years from date, with interest at the rate of ten per cent. per annum, payable semi-annually, principal and interest payable in the city of New York, to aid said company in the construction of their said road through the county of Dakota, in conformity with their articles of incorporation (said articles providing for the construction of a road to Columbus, and also through the counties of Cedar, Dixon, and Knox to the Black Hills of Dakota); and shall the proper authorities of said county in addition to the usual taxes annually cause to be levied a tax on the taxable property of said county sufficient to pay the interest on said bonds as it becomes due, and after the year 1880 cause to be levied and collected such further sum as may be necessary to create a sinking fund sufficient to pay the principal of said bonds at their matnrity: Provided, however, that said bonds shall be issued and placed in the hands of John H. Charles as trustee, to hold the same in trust for said company, and when fifteen (15) miles of said road including a road to the town of Jackson have been completed, so that trains are run on the same, the company shall be entitled to receive, and said trustee shall deliver to it, seventy thousand dollars ($70,000) of said bonds, and when the road is graded to the county line, then the said trustee shall deliver to said company the remainder of said bonds; said company shall construct said road on the best and most feasible routes through Dakota

county, but so as to be able to erect depots at Dakota city and Jackson on the line thereof, and said fifteen (15) miles of said road including the road to Jackson shall be com-
3 pleted, and trains run on the same on or before the first day of September, 1876, and the grading to the county line shall be done before the first day of January, 1877. And it is further provided, that the road to Columbus shall be carefully surveyed, by way of Homer, Fiddler's creek, or other branches of Omaha creek, and, if found reasonably practicable, it shall be adopted, and the road contructed thereon. And not less that twenty-five thousand dollars ($25,000) shall be expended in the construction of that portion of the road within eighteen months from this date. And it is further provided, that any railroad company constructing a road in Dakota county, from the south, shall have the right to join the road to which this donation is given, at such point of junction to Covington, and may become joint owners thereof on equal terms, and so as to give said company a joint portion of their donation by paying one-half of the costs of such portion of the road, first deducting therefrom so much of this donation as belongs to that portion of the road, rating it at four thousand dollars per mile, and said Covington, Columbus and Black Hills R. R. Company shall otherwise aid such railroad by furnishing it all reasonable and proper facilities in its construction and operation.

It is therefore ordered, that a special election be held in Homer, in Omadi precinct, in Dakota city; in Dakota precinct, in Jackson; in St. John precinct, and at the school-house in school district No. 26, in Pigeon Creek precinct, on the 27th day of December, 1875, at the usual places of voting in said precincts, for the purpose of voting for the foregoing proposition, and adopting or rejecting the same; said election shall be opened at eight o'clock a. m. of said day,
4 and remain open until six o'clock in the afternoon of said day. The form in which the question on said proposition shall be by voting by ballot, and upon each of the ballots shall be printed or written the words "For railroad bonds" or "Against railroad bonds"; and if two-thirds of the ballots cast shall have thereon the words "For railroad bonds," then it shall be deemed and taken in favor of the adoption of the above proposition entire, and if more than one-third of the ballots have upon them the words "Against railroad bonds," then the proposition shall be deemed to have been defeated. The election shall be conducted and the result ascertained in the manner prescribed by law for general elections, when not otherwise provided by statute.

And due record thereof was thereupon made in the books of record of the proceedings of said board.

And accordingly the said election was duly had, as provided in the said notices, and on the fifth day of January, 1875, the said board made and entered a minute in their said records to the effect that it appearing to its satisfaction that the said proposition was duly published in the "Dakota City Mail," a weekly newspaper published in said county, for four weeks in succession immediately before and prior to said election, and that in all respects the require-

ments of the statutes have be fully complied with, and that more than two-thirds of the votes cast at said election upon said proposition are in favor of said proposition submitted as aforesaid, their being four hundred and eighty-six votes given for railroad bonds and ninety-two votes given against railroad bonds, and finding that said proposition was duly submitted and had been duly carried by a two-thirds vote, therefore ordered that the same be entered at large upon the book containing the records of their proceedings, and that the clerk of the board give notice of the adoption of the said proposition by publication, as required by law.

Thereupon, at a session of said board held on the 13th day of March, 1876, it made in its said records a minute to the effect that it was satisfied that notice of the adoption of said proposition was duly given, and ordering the chairman and clerk of the board to issue, sign, and seal the said bonds and deliver them to said John H. Charles as trustee, under the said proposition, which they thereupon accordingly did.

And thereupon the said board made, among others, the four several bonds of said county, bearing date on the first day of January, 1876, by each whereof it acknowledged itself indebted to the Covington and Columbus and Black Hills Railroad Company in the sum of one thousand dollars, which sum it thereby, for value received, promised to pay to the said company, or bearer, at the Farmers' Loan and Trust Company in the city of New York, on the first day of January, 1876, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the first day of January and July of each year, upon the presentation and delivery at said Farmers' Loan and Trust Company of the coupons thereto severally attached.

And it was recited in each of said bonds that it was issued under and in pursuance of an order of the county commissioners of said county, authorized by an election held therein on the twenty-seventh day of December, 1875, and under and by virtue of chapter 35 of the General Statutes of Nebraska, and the amendments thereto, and the constitution of said State, article 12, adopted October, A. D. 1878. Upon each of said bonds were endorsed the constitutional and statutory provisions aforesaid, and also a certificate of the clerk of said county to the effect that the same was one of a series of bonds, amounting in all to ninety-five thousand dollars, which series was the only one ever made by said county, except ten thousand dollars for court-house purposes; that the question of the issue of said series, of which same was one, was submitted to a vote of the people of said county by a resolution of the county commissioners, dated November 23rd, 1875, in the following form: Shall the county of Dakota issue to the Covington, Columbus and Black Hills Railroad Company $95,000 ten per cent. twenty-year bonds, payable, both principal and interest, in New York city; and shall a tax be annually levied, in addition to the usual taxes, sufficient to pay interest as it comes due and accumulated a sinking fund to pay the principal at maturity?—which question was decided by a vote taken December 27th, 1875, of 486 votes for to 94 votes against.

On the second day of September, 1876, the said Charles reported to the said board that the said railroad company had completed nineteen miles of its railroad, and that from thence to the county line the grading had been completed in accordance with the proposition aforesaid, and that the road had been constructed from Covington, by way of Dakota City and Jackson, and trains were running on the same, all in said county, and thereupon the said board in its said record made a minute that from the said report and personal examination it found that the said company had complied with the provisions of the said proposition and were entitled to said bonds, and directed the said trustee to deliver them to said company accordingly, which he thereupon did.

On the 21st day of December, 1876, the auditor of State of the State of Nebraska, to wit, J. B. Weston, certified by endorsement on each of said bonds that upon the basis of data filed in his office it appeared that the same had been regularly and legally issued by said county to said railroad company, and said bond upon presen-

7 tation thereof by said company had on said day been duly registered in his office in accordance with the provisions of an act, entitled "An act to authorize the registration, collection, and redemption of county bonds," approved February 25th, 1875, and thereupon the said auditor, together with the secretary of State, to wit, Bruno Tzschuzk, by their endorsement thereon, duly certified that the said bond was issued pursuant to law. A copy of one of said bonds, save the number thereof, together with the said certificates and endorsements, is hereto attached, marked Exhibit "A," of which series of bonds thirty-five being as aforesaid issued, registered, certified, and endorsed, were thereafter negotiated to said plaintiff for value, and the said plaintiff thereupon and for value became and is the true and lawful owner and holder of said thirty-five bonds without notice of any matters, if any such there be, affecting the force and validity thereof; which bonds, so coming to said plaintiff and held and owned by him, are numbered in said series as follows: 21, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, when the said bonds were so as aforesaid certified, registered, and issued coupons were attached thereto, representing the interest in the said bonds mentioned. And when the said bonds so as aforesaid came to said plaintiff the bonds thereafter pleaded maturing July, 1879, and thereafter were not due or payable, and all coupons hereinafter pleaded which has already become due and payable had not been detached from said bonds.

8 1- cause of action. When said plaintiff, so as aforesaid, became the holder of said bonds, to wit, No. 21, a coupon was attached thereto, which was in the words and figures following, to wit:

"Dakota county, Nebraska, will pay to the bearer hereof, at the Farmers' Loan and Trust Company, in the city of New York, on the 1st day of July, 1878, fifty dollars, for six months' interest on bond No. 21.

W. C. McBEATH,
County Clerk."

whereof, as well as of the interest on said bond represented thereby, said plaintiff then and there became the owner and holder. When the same became due the said defendant had not, nor ever had, at the place of payment therein named, any funds to pay the same or any part thereof, and has never paid any part of said coupon or interest, but remains and is indebted to said plaintiff thereon in the full sum of $50, and interest thereon from July 1, 1878, at the rate of 10 per cent. per annum.

(Here follow 249 causes of action similar to the above, except as to the number of the bond, omitted in printing the record per stipulation of counsel. See page 92.)

58 Wherefor- the said plaintiff prays judgment against the said defendant for the sum of $5,250.00, and interest thereon at the rate of 10 per cent. per annum, as follows, to wit: On $1,750.00 from July, 1879; on $1,750.00 from January 1, 1880, and on $1,750.00 from July 1, 1880; on $1,750.00 from January first, 1881; on $1,750 from July 1st, 1881, and for costs of suit.

I consent to plaintiff adding causes of action numbered from 180 to 250, inclusive, in above petition.

Former answer and reply to stand and apply to this amended petition.

Omaha, August 20th, 1881.

E. WAKELEY,
Attorney for Defendant.

59 DISTRICT OF NEBRASKA, *ss:*

J. M. Woolworth, being first duly sworn, says he is the attorney for the plaintiff in the above petition; that said plaintiff is a non-resident of the said district, and deponent believes the facts stated in said petition are true.

J. M. WOOLWORTH.

Subscribed in my presence, and sworn to before me, this 17th day of Dec., 1880.

[SEAL.] W. H. S. HUGHES,
Notary Public.

EXHIBIT A.

Coupon bond registered by the auditor & by the secretary of the State of Nebraska, county of Dakota, under provisions of the new constitution of the State, adopted 1875.

No. 59. United States of America. $1,000.

STATE OF NEBRASKA, *County of Dakota:*

Interest 10 per cent. per annum, payable semi-annually, on the 1st days of January and July, at the Farmers' Loan & Trust Company, in the city of New York.

Know all men by these presents, that the county of Dakota, in the State of Nebraska, acknowledges itself indebted and firmly bound to the Covington, Columbus and Black Hills Railroad Com-

pany in the sum of $1,000, which sum the said county, for value received, hereby promises to pay to the said railroad company or bearer, at the Farmers' Loan and Trust Company, in the city of New York, on the 1st day of January, 1896, together with interest thereon from the 1st day of January, 1876, until paid, at the
60 rate of 10 per cent. per annum, which interest shall be payable semi-annually on the 1st days of January and July of each year upon the presentation and delivery at the said Farmers' Loan and Trust Company of the coupons of interest hereto severally attached.

This bond is one of a series of $95,000, issued under and in pursuance of an order of the county commissioners of the county of Dakota, in the State of Nebraska, and authorized by an election held in said county on the 27th day of December, A. D. 1875, and under and by virtue of chapter 35 of the general statutes of Nebraska, and amendments thereto, and the constitution of the said State, article 12, adopted October, A. D. 1875.

In testimony whereof, the county commissioners have caused these presents to be signed by the chairman of the board, and attested by the clerk of the said county, and affixed the seal of the said county at Dakota City, the county seat, this 1st day of January, A. D. 1876.

Attest:

[L. s.] (Signed) W. C. McBEATH,
County Clerk, Dakota County, Nebraska.

(Signed) J. W. DAVIS,
Chairman of the Board of County Commissioners of Dakota County, Nebraska.

On the reverse side of the bond is the following:

Extract from the constitution of Nebraska, and the several statutes of the State, authorizing the issue of these bonds. Constitution of Nebraska.

Article 12. No city, county, town, or other subdivisions of the State, shall ever make donations to any railroad unless a proposition so to do shall have been first submitted to the qualified elect-
61 ors thereof at an election by authority of law, and no bonds or evidences of indebtedness so issued shall be valid unless the same shall have endorsed thereon a certificate signed by the secretary and auditor of State, showing that the same is issued pursuant of law.

Chapter 35, General Statutes of Nebraska.

SEC. 1. Any county or city is hereby authorized to issue bonds in aid of any railroad, provided the county commissioners shall first submit the question to a vote of the legal electors of said county.

SEC. 2. The proposition of the question must be accompanied by a provision to levy a tax for the payment of the principal and interest of said bonds, in addition to the usual taxes.

SEC. 3. Any county which shall have issued its bonds in pursuance of this chapter shall be estopped from pleading want of con-

sideration thereof, and the proper officers may be compelled, by mandamus or otherwise, to levy the tax herein provided to pay the same. (Acts of 1875, sec. 3, p. 170.) Whenever the holder of county bonds shall present the same to the auditor of State for registration, the auditor, upon being satisfied that the same are issued according to law, shall register the same in his office in a book kept for that purpose, and shall under his seal of office certify upon such bonds the fact that they have been legally and regularly issued, and that such bonds have been registered in his office in accordance with the provisions of the act.

SEC. 4. Whenever any of the bonds of any county shall be so registered, the auditor of State shall annually on or before the second Monday of June in each year, ascertain the amount of sinking fund and interest accrued and to accrue (before the tax for the next succeeding year shall be levied) upon all bonds registered in his office, and shall certify the amount thereof to the clerk of the
62 county in which such bonds were issued.

SEC. 5. The clerk of any county, upon receiving such certified statement from the auditor of State, shall proceed to ascertain from the assessment roll of such county the amount of taxable property, and what percentage is required to be levied to pay said interest and create a sinking fund, in compliance with the certificate of the said auditor, and shall levy such percentage upon the taxable property of said county, and the said taxes shall be collected by the county treasurer in the same manner as other taxes are collected.

Certificate of the County Clerk.

This certifies that the issue of bonds, of which this is one, amounting in all to ninety-five thousand dollars, is the only issue of bonds that has ever been made by the said county, excepting ten thousand dollars issued for court-house purposes.

The question of issuing said bonds was submitted to the people of the county by a resolution of the county commissioners, dated November 23rd, 1875, in the following form: Shall Dakota county issue to the Covington, Columbus and Black Hills Railroad Company $95,000 ten per cent. twenty year bonds, payable both principal and interest in New York city, and shall a tax be annually levied, in addition to the usual taxes, sufficient to pay interest as it comes due, and accumulate a sinking fund to pay the principal at maturity?

This question was decided by a vote taken December 27, 1875, of 486 votes for to 94 votes against.

Witness my hand and official seal, this first day of January, A. D. 1876.

[L. S.] W. C. McBEATH,
County Clerk.

STATE OF NEBRASKA, } ss:
Auditor's Office, }

I, J. B. Webster, auditor of State, do hereby certify that,
63 upon the basis of the data filed in my office, it appears that the attached bond No. fifty-nine has been regularly and

legally issued by the county of Dakota to Covington, Columbus and Black Hills Railroad Company, and said bond, upon presentation thereof by said company, has this day been duly registered in my office in accordance with the provision of an act, entitled "An act to authorize the registration, collection, and redemption of county bonds," approved February 25, 1875.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Lincoln, this 21st day of December, 1876.

[L. S.] (Signed) J. B. WESTON,
Auditor of State.

Registry No. 1, 405, vol. "A," page 28.

STATE OF NEBRASKA, LINCOLN, *December* 8, 1876.

We certify that this bond is issued pursuant to law.

(Signed) BRUNO TZOCHUZK,
Secretary of the State of Neb.

(Signed) J. B. WESTON,
Auditor of the State of Neb.

Upon the back of said petition appear endorsements, in words and figures following, to wit:

No. 36 "G." United States circuit court, district of Nebraska. Henry H. Glidden *vs.* The County of Dakota. Petition. Filed Dec. 17, 1880. Watson B. Smith, clerk. James M. Woolworth, attorney for pl'ff.

64 Thereupon afterwards, to wit, on the 7th day of February, 1881, an answer was filed in said case, which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

HENRY H. GLIDDEN, Plaintiff,
vs.
THE COUNTY OF DAKOTA, Defendant.

I. The defendant, for answer to the amended petition in this action, states as follows:

1. It admits the following allegations thereof, to wit:

2. That the defendant was and is a municipal corporation as alleged.

3. That a proposition for the issuing of the bonds of Dakota county was submitted to the voters thereof as alleged.

4. That an election therein was held for voting upon the question of adopting or rejecting said proposition as alleged.

5. That the board of county commissioners of said county made a minute in its records as to the publication of said proposition, and the compliance with the statute and the number of votes given for and against said proposition, and ordering the clerk to make an entry and give notice, substantially as alleged.

6. That at a meeting of said board, March 13, 1876, proceedings were had, substantially as alleged.

7. That thereupon said board made the bonds described in the petition, with the recitals therein, substantially as alleged, and with some, but not all, of the provisions of the constitution and law in that behalf thereon endorsed.

8. That there was endorsed on said bonds a certificate of
65 the clerk, substantially as alleged.

9. That on the 2nd day of September, 1876, said trustee, Charles, made a report substantially to the effect alleged.

10. That thereupon said board made a minute concerning said report and as to personal examination substantially of the purport alleged, but the same was untrue and was fraudulently made.

11. That said trustee then delivered said bonds to said railroad company, or to some person or persons in its behalf.

12. That the auditor of State and secretary of State made endorsements on said bonds substantially of the import alleged.

But as to all the said proceedings, which are of record or in writing, the defendant says that it does not admit that they are in all things accurately stated or set forth in the petition, and prays leave for greater certainty to refer to and produce the same on the trial.

13. It denies, upon information and belief, that said bonds alleged to have been negotiated to plaintiff, or any of them, were sold or transferred to plaintiff without notice of defense thereto.

14. And as to all the allegations of said petition not herein specially admitted or denied, the defendant does not know that they, or any of them, are true, nor is it sufficiently informed as to the same to admit that they are true. Wherefore it denies each of said allegations.

15. It admits that when said bonds came to the plaintiff, if at all, the coupons in said petition pleaded were attached thereto, excepting the three coupons which matured prior to November 8th, 1879.

16. It alleges that prior to the time when said bonds came
66 to the plaintiff, if at all, the Springfield Iron Works, a corporation, being the owner and holder of said bonds and of all the coupons in the petition herein pleaded, commenced in this court an action against this defendant upon and to recover for said coupons which matured and became payable Jul. 1st, 1878, and a large portion of said other coupons, now pleaded by the plaintiff, in which action this defendant was served with process, and appeared and answered, this court having jurisdiction of the parties and subject-matter of said suit, and therein by its answer this defendant set up and insisted upon divers, valid, and sufficient matters of defense against said bonds and coupons and the validity thereof; and said action remained pending and said defense remained undetermined in said action until after said bonds came to the plaintiff, if at all, to wit, until the — day of November, 1880, when said action was dismissed.

17. It denies that the plaintiff is a *bona fide* holder of said bonds or coupons.

II. And further answering, the defendant says:

1. Before the time of the submitting of said proposition the said Covington, Columbus and Black Hills Railroad Company, a corporation under the laws of the State of Nebraska, had, by its articles of incorporation, adopted a route for a proposed railroad from Covington, in Dakota county, through that county westward to Columbus, in Platte county, and a road or branch from some point thereon in Dakota county through the counties of Dixon, Cedar, and Knox to the Black Hills, in Dakota Territory, and at the time of such submission was about to engage in constructing portions of its railroad.

67 2. At that time two lines of railroad, known respectively as the Omaha and Northwestern railroad and the Elkhorn Valley railroad, were partly constructed from Omaha and Fremont respectively northward in the direction of the railroad so proposed to be constructed by said Covington, Columbus and Black Hills Railroad Company, and it was proposed and contemplated to extend them so far northward that they would intersect said last-mentioned proposed line; and they were two of the roads which by the terms of said proposition might join said Covington, Columbus and Black Hills railroad, and both said roads, as well as all other roads with which they were connected or in the State of Nebraska, or with which said proposed road could connect, were of the ordinary standard gauge of the country, to wit, four feet and eight and one-half inches. All which facts were known to said railroad company.

3. The said contemplated line of railroad to Columbus was soon afterwards carefully surveyed by way of Homer and Fiddler creek, a branch of Omaha creek, in Dakota county, and was found to be, and in fact was, a reasonably practicable route for a railroad.

4. When said bonds were issued and delivered the said Covington, Columbus and Black Hills Railroad Company had not, nor has it at any time since, constructed or graded a road, or any part of a road, or expended any money upon said road, from any point by way of Homer or Fiddler creek to or in the direction of Columbus, or done anything in furtherance of a road to Columbus, except to grade a few miles of a line of road upon an entirely different and a shorter route than that mentioned in said proposition, and which, if ever a road should be built thereon, would be of far less advantage to Dakota county and the people thereof than would the

68 road so proposed to be built by way of Homer and Fiddler creek, and would fail in a large part to confer the benefits upon the faith and expectations of which said proposition was adopted, and would fail to give to the people of the southern portion of Dakota county any railroad or railroad connection whatever, both of which would have been secured to them by the compliance of said railroad company with the terms of said proposition on its part.

5. By the terms of said proposition, construed in view and by the aid of then existing facts and the situation of the parties, the said proposed railroad was to be of the ordinary standard gauge of railroads in this country, to wit, of the gauge of four feet and eight and

one-half inches, and this was so understood by said county of Dakota and the voters and people thereof, and so represented by said railroad company through its officers, managers, and authorized agents, and this company knew or had reason to suppose that said county and its voters and people so understood said proposition.

Yet, wholly disregarding the obligations of said proposition on its part, the said railroad company failed and refused to construct any part of its railroad of such gauge, but constructed such part thereof as it did in fact construct of the narrow gauge of three feet and six inches, by reason whereof it was unable to make direct and useful connections with other railroads at or near its eastern terminus, of which there were several of the ordinary gauge aforesaid, and was of a much cheaper and less valuable description and kind than was so proposed to be built, and it was in other respects poorly built and equipped and of inferior quality and materials, and was of very little value or utility to the said county or people of Dakota.

6. The said railroad company, by the use of money,
69 whiskey, and other corrupt means and appliances, attempted to and did influence and procure the giving of votes in favor of said proposition and the adoption thereof by the requisite proportion of votes.

7. The said railroad company has used and disposed of a considerable part of the proceeds of said bonds for purposes other than the building, extension, or improvement of said road so proposed to be built, in fraud of and to the prejudice of defendant and the people of Dakota county, and intended so to do when the said bonds were delivered to it.

8. The minute made in the records of the said county commissioners, on or about the 2nd day of September, 1876, to the effect that said Covington, Columbus and Black Hills Railroad Company had complied with the provisions on its part of said proposition, and was entitled to receive said bonds and directing the delivery of the same, was untrue and was fraudulent as to said county, and was procured by some undue means not known to defendant.

9. Further answering, defendant says that the terms and conditions of said proposition in respect to the levying of taxes and in other particulars was contrary to law.

10. Further answering, defendant says that the assessed valuation of the taxable property of said county of Dakota, in the year 1875, and when said bonds were voted for and issued, was only $637,665. That valid bonds of said county, to the amount of $10,000, had previously been duly issued by it for the purpose of erecting a court-house, and were still outstanding and unpaid; that because said proposition purported to authorize the issue, and there was issued pursuant thereto bonds exceedings ten per cent. of said assessed valuation, and exceeding fifteen per cent. thereof, inclusive of
70 the amount of said court-house bonds, as well as for other reasons herein alleged, the said bonds were, and each of them, were null and void.

11. And upon information and belief the defendant alleges that when the plaintiff purchased or took the bonds mentioned in the

petition, if at all, he had notice of the material matters of defense herein alleged, of the failure and refusal of said Covington, Columbus and Black Hills Railroad Company to comply with the conditions of said proposition on its part; that said railroad had not nor had any part of it been built or constructed to such extent or in such manner that said company was entitled to receive said bonds, or any of them; of such excess in the amount of bonds so voted to be issued, and so issued; of the terms of said proposition, and that they were not in conformity with law; that this defendant had refused to pay said coupons then past due, on the ground that said bonds and coupons were illegally issued and were invalid, and that it had divers good defenses against the same, and had pleaded the same as aforesaid.

12. And defendant further says that the certificate endorsed on said bonds, purporting to be a certificate of the secretary and auditor of State of Nebraska, did not show that the same were issued pursuant to law, and was otherwise insufficient, and, therefore, said bonds were and each of them was invalid and void.

T. S. GRIFFEY,
I. POWERS, JR.,
E. WAKELEY,
Att'ys for Defendant.

STATE AND DISTRICT OF NEBRASKA, } *ss:*
Dakota County, }

Henry Ream & J. C. Gribble, member- of the board of county commissioners of the county of Dakota, being duly sworn, severally say that the facts stated in the foregoing answer are true,
71 and the reason defendant does not make the inspection is that it is a corporation.

HENRY REAM.
J. C. GRIBBLE.

Sworn to before me and signed in my presence, this 3d day of February, A. D. 1881.

[SEAL.] W. C. McBEATH,
Clerk District Court.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 36, G. In U. S. circuit court, district of Nebraska. H. W. Glidden *vs.* The County of Dakota. Answer. Filed Feb'y 7, 1881. Watson B. Smith, clerk. T. S. Griffey, I. Powers, Jr., E. Wakeley, for defendant.

Reply.

In the United States Circuit Court, District of Nebraska.

HENRY H. GLIDDEN *vs.* THE COUNTY OF DAKOTA.

The plaintiff, for reply, says:

That not having knowledge in that behalf he denies each and every allegation contained in the second defence in said answer

alleged, save that the said railroad built by the Columbus, Covington and Black Hills Railroad Company was three and one-half feet gauge; but he says the same has been widened to the standard gauge and rebuilt in the best manner.

J. M. WOOLWORTH,
Pl'ff's Att'y.

DISTRICT OF NEBRASKA, *ss:*

James M. Woolworth, being duly sworn, says: That he is the attorney for the plaintiff in the above reply; that he has read the same and knows the contents thereof, and that the same is true.

J. M. WOOLWORTH.

72 Subscribed in my presence and sworn to before me, this 23d day of August, 1881.

[SEAL.] J. P. ENGLISH,
Notary Public.

I consent to this reply being filed, and waive its not being filed within the rule.

August 23d, 1881.

E. WAKELEY,
Att'y for Def't.

Upon the back of said reply appear endorsements in words and figures following, to wit: No. 36, G. United States circuit court, district of Nebraska. Henry H. Glidden *vs.* The County of Dakota. Reply. J. M. Woolworth, pl'ff's att'y. Filed Aug. 23d, 1881. Watson B. Smith, clerk.

Thereupon afterwards, to wit, on the 14th day of November, 1881, agreed statement of facts was filed in said case, which agreed statement of facts is in words and figures following, to wit:

In the United States Circuit Court, District of Nebraska.

HENRY H. GLIDDEN *vs.* THE COUNTY OF DAKOTA.

The plaintiff admits upon the record of this case the following facts:

1. The assessed valuation of taxable property in said county by the proper officers thereof for making the same in the year 1875 was $637,655, and no more, and the amount of bonds, of which the bonds from which the coupons in suit were detached were a part, exceeded ten per cent. of that sum, and with the $10,000 already voted for building a court-house exceeded fifteen per cent. of such valuation.

2. The railroad was not built by way of Homer & Fiddler's
73 creek, but was built south from Covington to Dakota five miles, from Dakota west to the junction five miles, thence northwest to Jackson about four miles, thence to the north line of the county and to Ponca nine miles. From the said junction west is three miles to the bluffs where Pigeon creek flows. The road

was graded from the junction to and through the bluffs, up Pigeon to the west line of the county eighteen miles; nothing else was done on the Columbus branch. The grades on the route by Homer and Fiddler's creek are easier than by Pigeon creek and reasonably practicable, but the distance is seven miles greater.

3. The standard gauge of railroad is four feet eight and a half inches; narrow-gauge roads are generally three feet, but they are sometimes three feet six inches, and sometimes other gauges.

4. The road was not of good quality in respect of grade, ties, and other materials—the iron was light weight.

5. The Omaha and Northwestern and the Elkhorn Valley railroads were at the time of issuing said bonds constructed northwardly in the direction of the line of road proposed to be built by said Covington, Columbus and Black Hills railroad. They had corporate authority to extend north, but were not being so extended. They were standard gauge, and there was no narrow gauge railroad in this State or with which the proposed road could connect.

6. After the proposition to issue said bonds had been published and before the election thereon, I. B. Hubbell, general manager of said railroad, stated publicly to the commissioners of the county and other citizens that his company had never intended to build any but a standard gauge road, which influenced the voters in favor of voting for the proposition. The ties for the first part of the road were gotten out and distributed, being eight feet long, the usual length for a standard gauge road, before the delivery of the
74 bonds to the trustee. The above admissions are made for the purpose of saving time in the trial of this cause, and are made subject to all objections to the matter thereof, on the ground that they are immaterial and irrelevant, and that by the records of the county commissioners the defendant is estopped to allege the same; the plaintiff now here insisting that proof in support of the matter of the said admissions is competent, and the said matters; and each and every thereof, save the first, ought not, for the reasons aforesaid, to be submitted to the jury.

J. M. WOOLWORTH,
Pl'ff's Att'y.

Upon the back of said agreed facts appear endorsements in words and figures following, to wit: No. 36, G. Glidden *vs.* Dakota County. Agreed facts. Filed Nov. 14, 1881. Elmer D. Frank, clerk.

Thereupon afterwards, at the November term of said court, on the 29th day of November, 1881, the following proceedings were had, as appears of record on folio 399, journal "G," of said court, to wit:

HENRY H. GLIDDEN
vs.
THE COUNTY OF DAKOTA. } Trial. No. 36, G.

Now come the parties herein, by their attorneys; also come the following-named persons as jurors, to wit, John Rickley, J. C. Santee, W. F. Goodwill, Samuel Tilton, Charles Burdick, H. L. Howard,

Roland Reed, E. Whitcomb, Joseph Dwork, F. W. Bevens, Elias Emery, and Cyrus Rose, who were duly empaneled and sworn according to law; and the said jury having heard the testimony adduced in part, said cause was continued until to-morrow morning at ten o'clock.

Thereupon afterwards, to wit, on the 30th day of November, 1881, instructions were filed in said case, which said instructions are in words and figures following, to wit:

75 *Plaintiff's Instructions.*

In the United States Circuit Court, District of Nebraska.

HENRY H. GLIDDEN *vs.* THE COUNTY OF DAKOTA.

The plaintiff requests the court to instruct the jury in this cause as follows:

I.

If the jury believe, from the evidence, that the Springfield Iron Company gave value for the bonds in question and took them in the usual course of business, it is incumbent upon the defendant to prove to your satisfaction that said company so took said bonds with notice of defects in the bonds which would invalidate them in the hands of the railway company.

And in order to prove such notice it is not enough for the defendant to prove facts which would excite the suspicion of a prudent man, or put him on inquiry, but the defendant must prove facts which affect the said iron company with bad faith.

Given. E. S. D.
Excepted to by def't. E. W.

II.

If you find, from the evidence, that the Springfield Iron Company parted with value for the bonds, it is incumbent upon the defendant to allege and prove that it had notice of the alleged defects in the bonds, and that fact must be proved by a preponderance of evidence; and if the defendant has not proved notice to the iron company by a preponderance of testimony, you must find for the plaintiff.

Given. E. S. D.
Excepted to by def't. E. W.

76 III.

By taking and reading to you the depositions of Brinkerhoff, Charles Ridgely, William Ridgely, and J. Taylor Smith, and Mr. Glidden, the defendant has given them and each of them credit, and cannot be heard to question their veracity or credibility in any of

the statements which they or either of them may have made in the course of their testimony.

Given. E. S. D.
Excepted to by def't. E. W.

IV.

Any witness who has testified to a certain fact, and thereafter, before his examination is concluded, finds he has made a mistake in reference to such fact, it is competent for him, and it is his duty, to make the correction as soon as he discovers it; and, therefore, if you find that the witness Brinkheroff discovered that he had made a mistake in stating when he informed Glidden of the suit in Nebraska, and afterwards before he was dismissed, corrected the error —he being the defendant's witness—his correction is entitled to the same credit as any other statement; nor is it competent for the defendant to question his veracity in making the correction. And for that purpose it is entirely immaterial that his recollection may have been refreshed by conversation with Glidden.

Given. E. S. D.

V.

If you find from the evidence that the witness Harbach made an error in his testimony in stating that Adams told him he was going West to sell to the railroad company iron rails—the sale having been previously made—and if you further find from the evidence that Harbach was animated by feelings of hostility against the
77 bonds or the enterprise of the railroad, you will take those circumstances into your consideration in determining the amout or degree of credit to which his other testimony is entitled.

Given. E. S. D.
Excepted to by def't. E. W.

VI.

The circumstance that McBeath, the county clerk of defendant, made and mailed to the iron company a statement relating to the vote cast for the bonds and the assessed valuation of the property in the county, even if it were true, does not show that the statement set forth the assessed valuation of the property of the county in 1875, and in force when the vote on the bonds was taken, or which governed this case.

Refused. It is for jury to say what was in paper. E. S. D.
Nor asked for. E. S. D.
Refusal excepted to by pl'ff.

VII.

If you find from the evidence that the plaintiff gave the iron company his check on the bank for $14,000 for the bonds in question, and that it was paid in due course of business, and that the money therefor was not directly or indirectly furnished by the iron

company or any one for it either before or after the payment of the check, then the plaintiff is a purchaser for value, and the circumstance tnat he had not the money in the bank to meet the check, but the same was advanced by the bank for him upon an arrangement between the cashier and him, does not affect his character as a purchaser of the bonds for value; that is, this circumstance alone would not be sufficient to show bad faith, but it is a circumstance that may be properly considered by the jury.

Given. E. S. D.

VIII.

And the circumstance that J. Taylor Smith was a director and stockholder of the iron company and also of the bank does
78 not affect the plaintiff's character as a purchaser of the bonds for value. If Smith loaned to the plaintiff the money to pay the overdraft caused by the $14,000 check, or any part of it, after the plaintiff's purchase of the bonds was completed by the delivery thereof and the payment of the check, and did so upon no previous understanding with the plaintiff, and with no understanding or agreement with him that the bonds or the proceeds thereof were to be the property of, or were to go to the iron company, the transaction between the plaintiff and Smith does not of itself show that the plaintiff is not a holder for value, but this fact may be considered by the jury.

Given. E. S. D.

IX.

It is perfectly consistent with the plaintiff's position as a purchaser for value that there were officers and directors common to the bank and the iron company. While their connection with the two institutions may have furnished an opportunity for perpetrating the alleged fraud, it is incumbent upon the defendant, in order to establish that fraud, to prove to your satisfaction much more than that fact.

Given. E. S. D.
Excepted to by def't. E. W.

X.

If the plaintiff was a purchaser of the bonds and coupons in suit for value, it is incumbent on the defendant to prove by preponderance of evidence that he bought the bonds and coupons with notice of the alleged defects in the bonds; and in order to bring this notice home to the plaintiff it is not enough to prove facts which might put a prudent man upon inquiry, but the defendant must establish bad faith.

Given. E. S. D.

XI.

The circumstance that there were past due coupons sold by the iron company to the plaintiff in the transaction under
79 inquiry which were attached to or had been detached from the bonds which had not been paid by the county was not

enough to bring notice home to the plaintiff of the alleged defects in the bonds so as to invalidate them in his hands. But this fact may be considered by the jury in consideration with other facts and circumstances, which may tend to show bad faith in the purchaser of the bonds.

Given. E. S. D.

XII.

The recital of the bonds in question and the certificates endorsed thereon were of a character to lead a person proposing to purchase them to accept them as valid and binding upon the county, and if these recitals and certificates were false it was the duty of the county officers, or the tax payers of the county, to prevent their passing from the railroad company into the hands of parties who would naturally rely on those statements, and if they neglected to do so they cannot complain if they are held to pay them after they have gone into the hands of *bona fide* purchasers for value.

Given. E. S. D.
Excepted to by def't. E. W.

XIII.

Abundant opportunity was afforded to the officers and tax payers of the county to prevent the bonds going from the railroad company into third hands, the same having been made iu January, 1876, and having been in September following ordered by the commissioners delivered by the trustee, Charles, to the railroad company and not having been disposed of by the compay until afterwards.

Given. E. S. D.
Excepted to by def't. E. W.

XIV.

The defendant cannot be heard to deny that the railroad company had built the road according to the proposition and was
80 ndtitled to the bonds it being estopped by the record of the commissioners on that subject.

Refusal excepted by pl'ff.
Refusal believed not to be material. E. S. D.
Not asked. E. S. D.

The plaintiff requests the court further to charge the jury, as follows:

That the answer in this cause does not charge notice to the Springfield Iron Company of any defects in the bonds; all the testimony presented to the jury to show such notice is, therefore, withdrawn fromtheir consideration, and they will find for the plaintiff.

Refused. E. S. D.

The auditor and secretary of State are a special tribunal cre-

ated by the constitution and laws to examine, determine, and decide whether the bonds in question were issued pursuant to law. In making that inquiry and deciding that question they acted judicially and their decision is final, and cannot be questioned or disputed by any party except for fraud, unless you find that evidence is laid before you which was not before them, it not being disputed in this case that they did decide that question in favor of the validity of the bonds, and there being no allegation or proof of fraud in making their decision or that all the facts were not before them, you will return your verdict for the plaintiff.

Refused. E. S. D.

Upon the back of said instructions appear endorsements in words and figures following, to wit: No. 36, G. Pl'ff's instructions. Filed Nov. 30, 1881. Elmer D. Frank, clerk.

Defendant's Instructions. Asked by Defendant.

If the Springfield Iron Company had notice when it purchased the bonds that the total amount of the bonds voted and issued
81 under the proposition therein mentioned, or referred to in the endorsements upon the bonds, exceeded ten per cent. of the assessed valuation of Dakota county for the year 1875, it was not a *bona fide* purchaser or holder thereof.

Given. E. S. D.
Excepted to by pl'ff.

2. If the Springfield Iron Works had notice at the time of its purchase of the bonds that the total assessed valuation of Dakota county for the year 1875 was only $637,655, then it was not a *bona fide* purchaser or holder thereof.

Given. E. S. D.
Excepted to by pl'ff.

3. If the party taking negotiable bonds has at hand the means of learning fully such facts, as, if known, would invalidate them, or constitute a defense thereto, and purposely and in bad faith omits to inquire into such facts, the party is not a purchaser in good faith.

Given. E. S. D.
Excepted to by pl'ff.

4. If Glidden was informed at the time of his alleged purchase of the bonds that there was a suit pending against the county upon past due coupons of the bonds which was being defended, or if he knew that fact, he did not thereby become a *bona fide* purchaser or holder thereof.

Refused. E. S. D.

5. Unless Glidden paid value for the bonds he is not a *bona fide* purchaser, although he may not have had notice of any fact affecting their validity.

Given. E. S. D.

6. If the Springfield Iron Company disposed of the bonds to prevent a successful defense being made on the ground that it was not a *bona fide* holder, and Glidden knew that, or had good reason to believe it, when he made his alleged purchase of the bonds, he was not a *bona fide* purchaser, even if he paid value for them.

Given. E. S. D.
Excepted to by pl'ff.

7. If the giving of Glidden's check and its payment by the bank were in pursuance of an arrangement and understanding which Giidden knew of, or had good grounds to believe, for effecting a colorable sale merely, and was not intended as a real and actual business transaction and payment for the bonds, this was not
82 giving value for them and did not make Glidden a *bona fide* purchaser.

Given. E. S. D.

8. If Glidden had no funds in the bank when he drew the check upon it, but, on the contrary, his account was overdrawn, and Glidden knew or had good reason to believe that the Springfield Iron Works or some stockholder or director thereof was to furnish and in fact did furnish the money to cover the over draft, this was not a payment of value by him.

Refused. E. S. D.
Def't excepts to refusal. E. W.

9. If the giving of Glidden's check for the bonds was a mere colorable transaction, and it was not in fact and good faith given and taken in payment, this was not giving value for them so as to make Glidden a *bona fide* purchaser.

Given. E. S. D.

10. If Glidden's alleged purchase was not a real and actual one, but he was to take and hold the bonds for the benefit of the Springfield Iron Works, he was not a *bona fide* purchaser.

Given. E. S. D.

11. If the price accepted by the Springfield Iron Works for the bonds was so low that it would raise a well-grounded suspicion of some apprehended defense thereto, this fact is entitled to due weight in determining the question of Glidden's good faith in the purchase.

Given. E. S. D.
Excepted to by pl'ff.

12. If Glidden was not a real purchaser of the bonds for value, but was to hold them without payment until he could dispose of them so as to cut off defenses or merely to accommodate the iron works, he was not a *bona fide* purchaser, even if he was to have the surplus proceeds of the bonds, if sold by him, over and above an agreed amount.

Given. E. S. D.
Excepted to by pl'ff.

If the plaintiff was not himself a *bona fide* purchaser of the bonds he cannot, under the pleadings, recover merely because it may not have been affirmatively shown that the Springfield Iron Works was not a purchaser in good faith. The evidence on that point
83 is, however, to be considered so far as it bears upon the question of Glidden's good faith in his purchase.

Refused. E. S. D.
Refusal excepted to by def't. E. W.

Upon the back of said instructions appear endorsements in words and figures following, to wit: No. 36, G. Def't's instructions. Filed Nov. 30, 1881. Elmer D. Frank, clerk.

Thereupon, afterwards, at said November term of said court, on the 3rd day of December, 1881, the following proceedings were had, as appears of record on folio 408, journal "G," of said court, to wit:

Jury Discharged.

HENRY H. GLIDDEN
vs.
THE COUNTY of DAKOTA. } No. 36—G.

On this day the jury empanneled and sworn herein came into court, and stated to the court that they are unable to agree upon a verdict.

Whereupon they are by the court discharged from further consideration of this case, and the same is hereby continued.

Thereupon, afterwards, at said November term of said court, on the 9th day of December, 1881, the following proceedings were had, as appears of record on folio 418, journal "G," of said court, to wit:

HENRY H. GLIDDEN
vs.
THE COUNTY OF DAKOTA. } No. 36, G.

By agreement of parties, it is ordered by the court that this cause be continued to the next May term of this court. It is further ordered, on motion of defendant's attorney, that said defendant have leave to amend answer in thirty days, and plaintiff to reply in fifty days.

Thereupon, afterwards, at the May term of said court, on the 22d day of May, 1882, the following proceeding were had, as appears of record on folio 753, journal "G," of said court, to wit:

84 *Trial.*

HENRY H. GLIDDEN
vs.
THE COUNTY OF DAKOTA. } No. 36, G.

Now comes the parties herein, by their attorneys; also come the following-named persons as jurors, to wit: J. N. Brooks, D. C. Howard, James Grace, Phillip Cassidy, Lewis Parker, Pat. McArdle,

Parker Page, John B. Manchester, Charles Chiles, Charles R. Dakin, James P. Ewing, Cyrus Reynolds, who were duly empanneled and sworn according to law, and the said jury having heard the testimony adduced in part, said cause was continued until to-morrow morning at 10 o'clock.

Thereupon, afterwards, to wit, on the 24th day of May, 1882, proposed amendment to answer was filed in said case, which said proposed amendment is in words and figures following, to wit:

Defendant, by leave of court, amends its answer as follows: By striking out from clause 8 of defense 11 the words following: "By some undue means not known to defendant," and inserting instead thereof the following words: "By fraud, in this, that the said Covington, Columbus and Black Hills Railroad Company then and there falsely and fraudulently represented to the said commissioners that the said company had completed nineteen miles of its said railroad in accordance with the proposition in which said bonds were voted, and had completed the grading thereof to the north line of the county in accordance therewith, and that trains were running on the said road, and the said commissioners, relying upon said false and fraudulent representations, and falsely pretending and reciting that they had personally examined the said road, and for the purpose of unduly and unwarrantably favoring said railroad company and prejudging the said county, did make and cause to be entered the said order and minutes."

85 Upon the back of said proposed amendment to answer appear endorsements, in words and figures following, to wit: No. 36, G. U. S. circuit court, dist. of Nebraska. H. H. Glidden *vs.* Dakota Co. Proposed amendment to answer. Filed May 24, 1882. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 24th day of May, 1882, additional instructions asked by defendant were filed in said case, which said instructions are in words and figures following, to wit:

1. Although a party calling a witness is not entitled to discredit or impeach him as unworthy of belief, yet the party is not necessarily bound by the statements of such witness. He may contradict them, or, if inconsistent statements are made, the jury should decide which, if either, is correct.

Given. E. S. D.

2. If the bonds with the coupons then attached were transferred to J. T. Taylor Smith, and held by him as collateral security at the time of the commencement of this suit, the action should have been in his name instead of Glidden's.

Refused. Answer does not raise this issue. E. S. D.

Upou the back of said instructions appear endorsements, in words and figures following, to wit: No. 36, G. Springfield Iron Works *vs.* Dakota County. Instructions asked by def't. Filed May 24, 1882. Elmer D. Frank, clerk.

Thereupon, afterwards, at said May term of said court, on the 26th day of May, 1882, the following proceedings were had as appears of record on folio 760, Journal "G" of said court, to wit:

HENRY H. GLIDDEN
vs.
COUNTY OF DAKOTA. } No. 36, G.

Now come the jury herein into court and present to the court their verdict, in writing, which said verdict is in words and figures following, to wit:

86 HENRY H. GLIDDEN, Plaintiff,
vs.
COUNTY OF DAKOTA, Defendant.

We, the jury, do find specially as follows:

1st. The Springfield Iron Works was a *bona fide* holder of the bonds.

2nd. The plaintiff Glidden was a *bona fide* holder of said bonds.

3rd. That the alleged purchase of the bonds of Glidden was on the 8th day of November, 1879, and the amount now due on the three coupons then past due is the sum of $6,884.09 (six thousand eight hundred and eighty-four dollars and nine cents).

4th. That there is now due on the other coupons, being those then attached to the other bonds, and not then due, the sum of $7,809.82 (seven thousand eight hundred and nine dollars and eighty-two cents).

5. We find that the county did pay the three coupons attached to the bonds at the time of their issue, and which first became due.

JOHN R. MANCHESTER, *Foreman.*
JAMES GRACE.
CHARLES DAKIN.
PATRICK McARDLE.
PHILLIP CASSIDY.
JAS. P. EWING.
J. W. BROOKS.
CHARLES CHILDS.
PARKER PAGE.
CYRUS REYNOLDS.
D. C. HOWARD.
LEWIS PARKER.

Thereupon, afterwards, to wit, on the 29th day of May, 1882, motion for new trial was filed in said case, which said motion is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

HENRY H. GLIDDEN, Plaintiff,
vs.
THE COUNTY OF DAKOTA, Defendant.

87 Now comes the defendant and moves the court that the verdict herein be set aside and vacated and a new trial be granted, for the reasons following:

There is error in the amount of recovery, in that it is too large.

The verdict is not sustained by sufficient evidence.

The first special finding is not sustained by sufficient evidence, or by any evidence.

The verdict is contrary to law.

The court erred in its respective rulings to which defendant excepted, refusing to admit evidence offered by defendant.

The court erred in giving to the jury the respective instructions asked for by plaintiff, to which defendant excepted.

The court erred in refusing to give to the jury the respective instructions asked for by defendant, to which refusals the defendant excepted.

And defendant further moves that the first special finding be set aside and vacated for the several reasons aforesaid.

E. WAKELEY,
T. S. GRIFFEY,
I. POWERS, JR.,
Att'ys for Defendant.

Upon the back of said motion for new trial appear endorsements in words and figures following, to wit: No. 36, G. In U. S. circuit court, dist. of Nebraska. H. H. Glidden *vs.* The County of Dakota. Motion for new trial. Filed May 29, 1882. Elmer D. Frank, clerk. E. Wakeley, T. S. Griffey, I. Powers, Jr., att'ys for def't.

Thereupon afterwards, at said May term of said court, on the 28th day of June, 1882, the following proceedings were had, as appears of record on folio 813, journal "G," of said court, to wit:

88 *Judgment on Verdict.*

HENRY H. GLIDDEN
vs.
THE COURT OF DAKOTA. } No. 36, G.

The jury in this action having on a former day of this term rendered a verdict of special findings for the plaintiff and assessed his damages at $14,693.91, and motion for a new trial having been submitted and overruled:

It is therefore ordered and adjudged by the court that the said plaintiff, Henry H. Glidden, recover from the said defendant, The County of Dakota, the said sum of fourteen thousand six hundred and ninety-three $\frac{91}{100}$ dollars, with interest at the rate of ten per cent. per annum from May 26th, 1882, and his costs herein expended, to which entry of judgment defendant excepts.

Thereupon afterwards, at said May term of said court, on the 29th day of June, 1882, the following proceedings were had, as appears of record on folio 817, journal "G," of said court, to wit:

HENRY H. GLIDDEN
vs.
COUNTY OF DAKOTA. } No. 36, G.

Now comes the defendant herein, by its attorney, E. Wakeley, Esq., and excepts to the entry of judgment against it in this cause.

Thereupon afterwards, to wit, on the 17th day of June, 1884, a writ of error was allowed in said case and a citation issued thereon, of which said writ of error and citation the following are the originals:

89 UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Henry H. Glidden, plaintiff, and The County of Dakota, defendant, a manifest error hath happened to the great damage of the said defendant in the said cause, as by its defendant complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, shall be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, at Omaha, in said district, this 17th day of June, 1884.

ELMER D. FRANK, *Clerk.*

Allowed by—
ELMER S. DUNDY, *Judge.*

89½ [Endorsed:] No. 360 G. United States circuit court, district of Nebraska, The County of Dakota, plaintiff in error, *vs.* Henry H. Glidden, defendant in error. Writ of error. Filed June 17, 1884. Elmer D. Frank, clerk.

90 THE UNITED STATES OF AMERICA, } *ss:*
District of Nebraska; }

To Henry H. Glidden, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein The County of Dacotah is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 19th day of June, 1884.

ELMER S. DUNDY, *Judge.*

90½ [Endorsed:] No. 36, G. United States circuit court, district of Nebraska. The County of Dakota, plaintiff in error, *vs.* Henry H. Glidden, defendant in error. Citation. Filed June 21, 1884. Elmer D. Frank, clerk.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 20th day of June, 1884, I received this citation, and on the 20th day of June, 1884, I served the same upon James M. Woolworth, attorney for defendant in error, in Douglas county, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the endorsements thereon.

ELLIS L. BIERBOWER,
United States Marshal for the District of Nebraska.
By R. E. ALLEN,
Deputy United States Marshal.

Marshal's costs:

Service----	2 00
Mileage ---	06
Total---	2 06

[Endorsed:] Filed Jun. 21, 1884. Elmer D. Frank, clerk.

91 UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

By virtue of the foregoing writ of error, and in obedience thereto, I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios from one to 90, inclusive, contain true and faithful transcripts of all pleadings and proceedings of record and on file in my office as said clerk, in the case of Henry H. Glidden *vs.* Dakota County, and that a copy of the writ of error and citation has been lodged and remains in my said office.

Witness my hand and the seal of said court, at Omaha, this 16th day of July, 1884.

[SEAL.] ELMER D. FRANK, *Clerk.*

92 In the United States Supreme Court.

THE COUNTY OF DAKOTA, Plaintiff in Error, *vs.* HENRY H. GLIDDEN.

It is hereby stipulated that the clerk may cause to be printed one cause of action as set forth in the petition with all the introductory and general matter therein contained, but omit from the printed record all other causes of action, inserting in lieu thereof a statement that there are so many other causes of action in the written transcript like the one set forth, and that the omission is made from the print by agreement of counsel.

Dated Omaha, Nov. 17, 1884.

I. M. WOOLWORTH,
Att'y for Def't in Error.
R. J. POPPLETON,
Att'y of Plaintiff in Error.

[Endorsed:] Supreme Court U.S. 1884, October term. No. 921. The County of Dakota, pl'ff in error, *vs.* Henry H. Glidden. Stipulation to omit portions of record in printing. Office Supreme Court U. S. Filed Dec. 4, 1884. James H. McKenney, clerk.

Endorsed on cover: Nebraska C. C. U. S. No. 921. The County of Dakota, plaintiff in error, *vs.* Henry H. Glidden. Filed 10th September, 1884.

113-222

113-222

SUPREME COURT U. S.
FILED.
DEC 5 1884
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

No. 921.

THE COUNTY OF DAKOTA, PLAINTIFF IN ERROR.

vs.

HENRY H. GLIDDEN.

MOTION TO DISMISS WRIT OF ERROR, AND BRIEF OF DEFENDANT IN SUPPORT THEREOF.

J. M. WOOLWORTH,
Attorney for Defendant in Error.

R. P. RANNEY,
A. P. HODGES,
Of Counsel.

FESTNER'S PRINT, OMAHA.

In the Supreme Court of the United States.

No. 921.

THE COUNTY OF DAKOTA, PLAINTIFF IN ERROR,

vs.

HENRY H. GLIDDEN.

MOTION TO DISMISS WRIT OF ERROR.

Now comes the defendant in error by J. M. Woolworth, his attorney, and moves the Court to dismiss the writ of error in this cause on the ground that the judgment of the Circuit Court and the matters involved therein have been finally settled between the parties, and ought not to be further agitated in this court.

J. M. WOOLWORTH,
Attorney for Defendant in Error.

R. P. RANNEY,
A. P. HODGES,
Of Counsel.

In the Supreme Court of the United States.

THE COUNTY OF DAKOTA, PLAINTIFF IN ERROR,

vs.

HENRY H. GLIDDEN.

BRIEF OF DEFENDANT IN ERROR IN SUPPORT OF MOTION TO DISMISS WRIT OF ERROR.

This is a writ of error to the circuit court of the United States for the district of Nebraska.

The case is now before the Court upon motion to dismiss the writ of error on the ground that the parties have compromised and settled the dispute which was raised in this action, and it ought not to be further agitated between them.

The facts of the compromise and settlement, as they appear from the records and the papers filed in support of the motion, are these:

The judgment brought here for examination was rendered on the 28th of June, 1882, upon a special verdict of a jury, returned on the 25th of May. On the day next after the judgment was entered, at a meeting of the board of county commissioners, which was the corporate authority of the county, the matter of the compromise and adjustment of the bonds issued on July 1st, 1876, to the Covington, Columbus and Black Hills Railroad company by said county, by the issuance of six (6) per cent. bonds in exchange for and substitution of said indebtedness, was considered and discussed by the board, and on motion the board adjourned to July 15th, 1882, to further consider the same.

On the 15th of July the board again met, and "on motion the matter of the completion of the settlement of the bonded indebtedness was adjourned to July 24th, 1882."

On the 24th of July the board again met, when "the matter of the refunding the bonds heretofore issued to the Covington, Columbus and Black Hills Railroad company was adjourned to August 7th."

On the 7th of August "the parties representing holders of the railroad bonds of said county not being ready to present the same, with blanks for new bonds, further proceedings were adjourned to August 14th."

On the 14th of August the record is as follows: "Commissioners met pursuant to adjournment. Now at this time, August 14th, 1882, the board of county com-

missioners met pursuant to adjournment. Present—Henry Ream, John Boler and E L. Wilbur, commissioners, and Henry Stoll, county clerk, to proceed to the matter of issuing bonds of said county, to take up and refund the 10 per cent. bonds and coupons heretofore issued by said county to aid the Covington, Columbus and Black Hills railroad, on January 1st, 1876, and the said former issue of bonds still being a just debt and legal liability against the county of Dakota, and it being for the best interest of the county to take up the same and issue new six per cent. bonds therefor. The said county commissioners do hereby order and authorize the execution and issuance of bonds bearing interest at 6 per cent per annum, from July 1st, 1882, payable semi-annually on the first days of January and July in each year, and running twenty years from and after July 1st, 1882, and principal payable at the option of county after ten years from their date; principal and interest payable at Farmers' Loan and Trust company in city of New York, and such issue shall be to the amount of one hundred and forty-four thousand dollars ($144,000), being the amount of said former issue of bonds unpaid, with coupons and interest thereon to July 1st, 1882; and the chairman of the board of county commissioners of said county is hereby authorized and directed to sign and execute said bonds for and in behalf of said county, and the clerk of said county shall duly attest the same, and affix the seal of said county thereto; and the coupons thereto shall be signed by the clerk of said county,

and after the certification and registration thereof as by law provided, the same shall be surrendered respectively to the parties entitled thereto, on the presentation of the former issue of bonds and coupons for which said respective new bonds shall be issued for substitution of and exchange for said re-exchange and substitution to be dollar for dollar. Upon motion commissioners now adjourn to meet August 26th, 1882, at 10 o'clock a. m."

On the 25th of November the commissioners passed the following resolution:

"Whereas, negotiations are pending between the county of Dakota and the holders of the bonds and coupons issued by said county to the Covington, Columbus and Black Hills Railroad company for a settlement and adjustment of said indebtedness, which cannot be concluded before January 1st, 1883; and

"Whereas, some of said coupons become due January 1st, 1878, and an action thereon will be barred January 1st, 1883, unless otherwise arranged;

"Therefore be it resolved, by this board that in view of said pending negotiations in case said settlement is not consumated and no adjustment is made between said county and the holders of said coupons, and suits are thereafter brought within one year on said coupons due January 1st, 1878, the said county will not interpose the plea of the statute of limitations to said actions.

"Commissioners now adjourned to meet December 23, 1882, at 9 o'clock, a. m."

On the 6th of December, 1883, the following proceedings were had: "Now at this time the following bonds of Dakota county, issued to the Covington, Columbus and Black Hills Railroad company, of the date of January 1st, 1876, payable twenty years after date, numbered respectively from one to ninety-five, and in the amount of one thousand dollars each, drawing interest at the rate of 10 per cent. per annum, with interest coupons attached, said coupons of the denomination of fifty dollars each, having been taken up and redeemed by the county, by issuing and delivering refunding bonds in lieu thereof; and the commissioners deeming it safer for the county that the bonds thus redeemed be destroyed, the said bonds and coupons were this day, in the presence of the said board and others burned and destroyed, to-wit:

* * * * * * *

The above and foregoing bonds and the coupons shown to be attached were all now destroyed by burning with fire in the presence of the following named persons, to-wit: John Boler, Eugene L. Wilbur and Henry Loomis, board of county commissioners, and John T. Spencer, attorney, Henry Stoll, county clerk, and T. D. Curtis, deputy county clerk. Thereupon commissioners adjourned to meet December 7th, 1883, when they will meet for the purpose of completing the record in regard to said bonds and coupons destroyed."

We suspend here our account of the action of the county commissioners for the purpose of adverting to the

authority of law under which they proceeded. The statute defining the general powers of the board of county commissioners will be found at pages 177 *et seq.*, of the Compiled Statutes of 1881, and is as follows:

"Sec. 20. Each county which has heretofore been, or may hereafter be established in this state, according to the laws thereof, shall be a body politic and corporate, by the name and style of 'The County of ————,' and by that name may sue and be sued, plead and may be impleaded, defend and be defended against in any court having jurisdiction of the subject matter, either in law of equity, or other place where justice shall be administered.

"Sec. 21. The powers of the county as a body corporate or politic shall be exercised by a county board, to-wit: In counties under township organization, by the board of supervisors, which shall be composed of the town and such other supervisors as are or may be elected pursuant to law; in counties not under township organization, by the board of county commissioners.

"Sec. 22. Each county shall have power: First—To purchase and hold the real and personal estate necessary for the use of the county, and to purchase and hold, for the benefit of the county, real estate sold by virtue of judicial proceedings in which the county is plaintiff or is interested. Second—To sell and convey, or lease, any real or personal estate owned by the county. Third—To make all contracts and to do all other acts in relation to the property and concerns of the county necessary to the

exercise of its corporate powers.

"Sec. 23. The county boards of the several counties shall have power: First—To take and have the care and custody of all the real and personal estate owned by the county. Second—To manage the county funds and county business, except as otherwise specifically provided. Third—To make all orders respecting the property of the county; to keep the public buildings insured; to sell the public grounds or buildings of the county, and purchase other grounds in lieu thereof. Fourth—To lay out, alter, or discontinue any road running through their county, and perform such duties concerning roads as may be prescribed by law. Fifth — To examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county. Sixth—To authorize the vacation of any city or village plat when the same is not within any incorporated city or village, on the petition of two-thirds of the owners thereof. Seventh—To change the name of any city or village plat on the petition of a majority of the legal voters residing therein, when the inhabitants thereof have not become a body corporate."

When on the 29th day of June, 1882, the subject of refunding the bonds of the issue of 1876 was first considered by the board, the statute authorizing the proposed action was an act of the legislature passed in 1877, which will be found in the Compiled Statutes of the state at page 325, and is as follows:

"Section 1. That any county, precinct, or city in the state of Nebraska, which has heretofore voted and issued bonds to aid in the construction of any railroad or other work of internal improvement, and which bonds, or any part thereof, still remain unpaid, and remain and are a legal liability against such county, and bearing interest at 10 per cent. per annum, is hereby authorized to issue coupon bonds at a rate of interest not exceeding 8 per cent. per annum, to be substituted in place of and exchanged for such bonds heretofore issued, whenever such county, precinct, or city can effect such substitution and exchange, which substitution and exchange shall be dollar for dollar.

"Sec. 2. The new bond so issued shall have recited thereon the object of its issue, the whole of the act under which the issue is made, stating the issue to be in pursuance thereof, and shall also state the number, date and amount of the bond or bonds for which it is substituted, and such new bonds shall not be delivered until the surrender of the bond or bonds so designated.

"Sec. 3. The new bonds so issued shall not require a vote of the people to authorize such issue, and they shall be paid and the levy be made and the tax collected for their payment in accordance with the laws now governing said bonds heretofore issued."

On the 28th of February, 1883, while the commissioners were having the same subject under their consideration, the legislature passed another act upon the special application of this county for the express purpose of fund-

ing these bonds. That act is as follows:

"Section 1. That any county of this state is hereby authorized to issue its coupon bonds at a rate of interest not exceeding 6 per cent. per annum for the purpose of refunding its bonded indebtedness, said bonds to be substituted in place of, and exchange for bonds heretofore issued, whenever such county can effect such substitution and exchange, which substituted bonds shall equal the amount due for principal and interest of such bonded indebtedness, with interest, payable semi-annually, and the principal payable not exceeding twenty years from their date.

"Sec. 2. The provisions of the foregoing section and of this act shall apply to and include all bonds heretofore issued by any county which have been held and determined to be valid and binding in the hands of *bona fide* holders thereof, in any action or actions thereon, or on any coupon thereof, by any state or federal court of competent jurisdiction within this state, and such bonds with the interest thereon constitute a bonded indebtedness within the meaning of this act.

"Sec. 3. That in all cases where the bonds of any county are past due, and in all cases where counties have issued bonds that were redeemable at the option of the county board at a fixed time, and where said time has elapsed, the county board shall notify the holders of such bonds to present the same for redemption, or exchange, or substitution, and in case of the refusal of such bond-

holders to present the same for redemption, or exchange and substitution, at the place where such bonds are made payable, the county shall not be liable to pay interest on said bonds in excess of the rate provided for as the interest of said refunding bonds, and such interest shall commence with the coupon next to become due after such notice has been given.

"Sec. 4. That in case an exchange of said bonds cannot be effected, the county commissioners are hereby authorized to sell said refunding bonds from time to time, at not less than their face value, in such sums as may be necessary to create a fund for the redemption of the outstanding bonds aforesaid, and the money realized from the sale of said refunding bonds shall not be expended or used for any other purpose than for refunding said outstanding bonds.

"Sec. 5. It shall be the duty of the auditor of state to register such substituted bonds, and of the secretary and auditor of state to certify the same, and a tax to pay the interest and principal thereof shall be levied in the same manner as is now provided by law or the constitution in the case of other county bonds.

"Sec. 6. That the county clerk of each county shall certify under the seal of the county to the auditor the number, the amount and description of each bond cancelled, or to be cancelled and refunded, and the amount due thereon for principal and unpaid interest, and thereupon the auditor is authorized to register a similar amount

of refunding bonds; but in no case shall the auditor register any refunding bonds in excess of the amount so certified to him by the county clerk as aforesaid; and that said bonds shall be entitled to registration as aforesaid in the order that they are presented to the auditor.

"Sec. 7. That the registration provided for in this act shall apply to all refunding bonds already issued, or to be issued, in conformity with the provisions of this act.

"Sec. 8. That counties are hereby authorized to fund their bonded indebtedness as provided for in this act, at dollar for dollar of said indebtedness, irrespective of the fact that said indebtedness exceeds 10 per cent. of the present valuation of the property of said county, and the same shall be registered as provided for in this act; and the refunding bonds hereby authorized may be issued by the commissioners of the county without submitting the proposition therefor to a vote of the electors.

"Sec. 9. That whereas an emergency exists, this act shall take effect from and after its passage."

The record of the proceedings to compel the state officers to register these bonds deserves to be noticed in this connection. It appears that on the 13th day of October, 1882, the county in its corporate capacity, by its counsel, complained to the Supreme Court of the state that the auditor and secretary of state refused to register the bonds it proposed to issue for the purpose of taking up the bonds of the issue of 1876, and asked a mandatory order upon them to do so. The officers returned to the

writ that the proposed bonds were illegal and void, and therefore ought not to be registered by them.

After full argument the Supreme Court entered judgment, awarding a peremptory mandamus, directed to the auditor and secretary, commanding them to register the bonds. It appears from the opinion of the court, which will be found in the fourteenth volume of the Nebraska Reports, at page 280, that it was held that a vote of the people upon the reissue was not necessary; and that the state officers could not justify their refusal to register by claiming that the original issue were illegal and void; but upon that subject were concluded by the certification of the original bonds by their predecessors.

This decision seems to have proceeded upon the statute first above set forth. It cannot be doubted that the terms of the second statute were broad enough to confer upon the county authorities the power to take up a former issue with new bonds. It was framed for the express purpose of putting beyond all question the authority to refund the old bonds and issue these bonds for the purpose.

Returning now to the proceedings of the county commissioners, with direct reference to the adjustment of the judgment now before the court, we find that on the 7th of December, 1883, the following proceedings were had:

"Now at this time in the matter of Henry H. Glidden *vs.* Dakota County—In the United States Circuit Court for Nebraska, settled as follows, to-wit:

The amount of judgment and interest to July 1st, 1883, - - - - - - - - -	$15,740 31
Costs due and paid by Glidden, - - - - -	249 43
Total amount due, - - - - - -	$15,989 74
Less amount retained by the county for plaintiffs, Hon. J. M. Woolworth, pursuant to notice filed and in lieu thereof, - - - - - - -	2,500 00
Balance paid Glidden on judgment and costs in full,	$13,489 74

"See Glidden's receipt in full on file in Clerk's office. Also four coupons all numbered 10, from bonds numbered 75, 76, 77 and 78; and four coupons, all numbered 11, from bonds numbered 75, 76, 77 and 78, and interest on the same to July 1st, 1883, $478.00; amount of costs paid Glidden, $32.26, leaving a total balance due Glidden of $14,000.00; which said amount was paid Henry H. Glidden in the said new refunding bonds, and numbered as follows, to-wit: bonds numbered respectively 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119 and 120, with coupons numbered one (1) and two (2) from each of said bonds detached by the county, as per agreement made on settlement, making in all the sum of $14,000.00.

"The following is a receipt in full of J. M. Woolworth, plaintiff's attorney, in the above entitled cause for such amount retained by the county for said Woolworth:

"Received from Dakota County the sum of two thousand five hundred dollars, as follows: Two thousand dollars in bonds; five hundred dollars in cash, in full set-

tlement of my fee in case of *Glidden vs. Dakota County*, in United States Court of the District of Nebraska, as per lien heretofore filed and notice given.

Sioux City, Iowa.

J. M. WOOLWORTH,
By JOY & WRIGHT, his Agents."

The affidavits filed in support of this motion show that neither Glidden nor his counsel took any part whatever in any of the proceedings of the county commissioners, but after the county had obtained the authority to issue the new bonds by the act last above recited, and the validity of such bonds was in effect affirmed by the supreme court, the parties came together and made an adjustment of their differences. Glidden was evidently moved to accept less than what his judgment called for by the threat of the county to prosecute a writ of error from this court to review his judgment. He was desirous of avoiding delay in securing the fruits of his litigation, and also the uncertainty of the judgment of this court. Accordingly he was willing to take the obligations of the county for the amount adjudged to him, payable, not presently, as the judgment required, but after twenty years, with interest at the rate of 6 per cent. per annum instead of that which the judgment drew. On the other hand, the county was desirous of avoiding the expense of a writ of error from this court, and therefore of waiving its right thereto, and the chance of avoiding the judgment and giving its bonds in satisfaction thereof.

Such being the situation and disposition of the parties, they came together and effected the settlement, with the distinct understanding on both sides that the whole controversy was finally adjusted between them. This appears not only from the terms of the entry last above cited from the records of the commissioners, but also from the whole course of the proceedings, as it appears from the records and from the affidavits.

Beyond all doubt the case would have laid at rest according to this understanding and agreement of the parties, but for the decision of this court in the case of *Dixon County vs. Field*, decided on the 24th of March, 1884, and reported in 111 U. S. 83. It was shortly after the decision in that case, that is to say on the 17th day of June, 1884, that this writ of error was sued out. The two years allowed therefor would have expired in eleven days. The attempt is now made to avoid the effect of the settlement and compromise between the parties, because the county commissioners acted under a mistake of law when they procured the satisfaction of the judgment.

FIRST POINT.

Laying out of view the character of the plaintiff in error as a municipal corporation, and considering the compromise and settlement between the parties as if it were made and concluded by and between private individuals, and also laying out of view the question of whether this is

the proper time, and our motion the proper proceedure, for asserting the compromise and settlement, we submit that the general rule of law is, that where parties have acted intelligently and upon consideration, their agreement to settle, compromise and compose their differences will be enforced by the courts. The rule is subject to the limitation that there must be a real dispute between them, the issue of which is doubtful, and it is enforced, notwithstanding it shall turn out afterwards that the claim of the one party against the other was not well founded in law. This is an old rule. Lord Hardwicke laid it down in 1789, in *Stapilton vs. Stapilton*, 1 *Atk.* 2, in these words: "That an agreement entered into upon a supposition of a right, or of a doubtful right, though it after comes out that the right was on the other side, shall be binding; and the right shall not prevail against the agreement of the parties; for the right must always be on the one side or the other, and therefore the compromise of a doubtful right is a sufficient foundation for an agreement."

A great many cases may be cited in support of this general proposition; but the judgments of this court are quite sufficient for our present inquiry.

The case of the *Union Bank of Georgetown vs. Geary*, 5 Peters 99, was a bill in equity to restrain the execution of a judgment. This judgment was recovered against the plaintiff, Mrs. Geary, as administratrix of her late husband, upon a promissory note for $2,200, made by one Merrill, and endorsed by the intestate. It appeared

that the attorney of the bank agreed on its behalf to collect the judgment against Merrill if Mrs. Geary would waive her defense to the action and allow judgment to go at once. But in violation of this agreement the bank was proposing to enforce the judgment against her property. Mr. Justice Thompson, delivering the opinion of the Court, says at page 114:

"But it was objected that this contract was without any consideration to support it. The consideration alleged in the bill is, relinquishing all defense in the action, and confessing a judgment; averring that the complainant had a valid legal defense, which would have defeated the right of the bank to recover on the endorsement, no due and legal demand having been made of the maker, and notice thereof given to the endorser.

"It is unnecessary to examine whether this defense would have been available or not. The validity of the contract did not depend upon that question. It is enough that the bank considered it a doubtful question, and that they supposed they were gaining some benefit by foreclosing all inquiry on the subject; and the complainant, by precluding herself from setting up the defense, waived what she supposed might have been of material benefit to her. That the bank considered it of some importance to shut out this defense, is fully shown by the testimony of Magruder. He says it was known to the bank before the judgment was confessed, that many of their suits against endorsers for trial at that term were in jeopardy, in conse-

quence of a late decision of the court as to the insufficiency of the demand on the fourth instead of the third day of grace. So that this question, at the time the contract was entered into, was considered by the bank, at least, doubtful. And to permit a subsequent judicial decision on this point in their favor, as having a retrospective effect, so as to annul a settlement or agreement made by them under a different state of things, would be sanctioning a most mischievous principle."

This court has enforced compromise agreements in the following, among other cases:

New Albany vs. Burke, 11 *Wall.* 96.
French us. Shoemaker, *14 Wall. 214.*
St. Louis vs. U. S., 92 *U. S.* 462.
Oglesby vs. Attrill, 105 *U. S.* 605.
Mills County vs. R. R. Cos., 107 *U. S.* 557.
County of Jasper vs. Ballou, 103 *U. S.* 745.

SECOND POINT.

Thus far we have been considering the abstract question, whether a compromise of a doubtful claim by con tending parties who are natural persons should be en forced against them, although it should appear subsequently that the claims on the one side were not supported by the law.

It is necessary to show that this principle is as applicable to municipal corporations as to any other parties.

The contention upon the other side is that because the

county had no power to enter into the contract expressed in the bonds, from which the coupons in suit were detached, therefore it had no competency to assume any other obligations based thereon. If this were so, it would be impossible for any municipal corporation to settle and compromise any dispute in which the legal validity of the adverse claimant was an element.

In the case of *The Board of Liquidation vs. The Louisville and Nashville Railroad Company*, 109 *U. S.* 223, a compromise was enforced against the municipality, or its corporate agency. There were between the corporate authorities of the city of New Orleans and adverse claimants long pending disputes as to the title to riparian estates formed by the alluvion in front of the city, and a decree adversely to the corporate authorities was rendered, against which an appeal was prosecuted to this court. During the pendency of the appeal an act was passed creating the Board of Liquidation of the city debt, and providing that it should have exclusive control and direction of all matters relating to the bonded debt of the city of New Orleans, and authority to issue new bonds to be exchanged for old at the rate of fifty cents of new for one dollar of old. The act also authorized the board to dispose of the property of the city on such terms and conditions as may be deemed favorable, the proceeds to be credited to the city debt fund. No new bonds were issued, nor did the city actually transfer to the board the property in question. In 1882 another act was passed in-

corporating the city and providing for the management and administration of its affairs, etc. This act vested in the city council control over lands of the class in question, and also vested in the city all the rights, title and interest of the city in, among other things, lands of the same description, and repealed all former acts. Other acts were passed which do not seem to be necessary to be noticed. The decree appealed from was rendered on the 11th day of June, 1878, and the appeal was docketed on the 16th of December following. On the 11th of October, 1882, the city council passed a resolution accepting a proposition of the railroad company to compromise and settle all the matters in controversy in the suit pending in this court on appeal, the company to pay the city $40,000, the city to dismiss its appeal and acquiesce in the decree of the Circuit Court. On the same day the company paid the money to the city.

"On the 10th of October, 1882, the suit pending in this court was continued at the request of the parties, but at a later day in the term the railroad company appeared, and presenting a stipulation for the dismissal of the appeal, signed by the city attorney of New Orleans pursuant to the terms of the compromise, asked to have the appropriate order entered upon that stipulation. Thereupon the board of liquidation came and resisted the entry of any such order, on the ground that during the pendency of the appeal authority over the subject matter of the controversy had been transferred from the city council to the

board, and that the compromise which had been effected was not binding. The board also asked leave to prosecute the appeal in the name of the city. It was conceded that the city council made the compromise which was claimed, and that the railroad company was entitled to a dismissal of the appeal if the city council had authority to do what was done, and the compromise was fair. This court thought the dispute as to the authority of the council presented questions too important to be settled summarily on motions, and ordered the motions to be continued until the present term, when the appeal would be dismissed in accordance with the stipulation, unless the board should begin and prosecute without unnecessary delay, in some court of competent jurisdiction, an appropriate suit to set aside the compromise. This suit was brought for that purpose, and the Circuit Court for the western district of Louisiana, on full consideration, entered a decree dismissing the bill. To reverse that decree this appeal was taken, and the single question to be decided is, whether, upon these facts the board of liquidation is entitled to the relief it has prayed for.

"There is no pretence of fraud, either on the part of the city council or the railroad company. So far as appears, the negotiations were carried on by both parties openly and without any attempt at concealment. The board of liquidation does not even allege that it was ignorant of what was being done.

"The whole case, therefore, turns on the legislative

authority of the city council to bind the city by a compromise of the suit, and about this we have no doubt."

The particular subject here under discussion, namely, whether municipal corporations may settle controversies, doubtful upon a legal question, and where it turns out afterwards that that question should be answered in favor of the corporation, does not seem to have been discussed or considered at large by the Court. The competency of the board of liquidation was assumed, upon the ground that control of the property in question was committed to it.

The case of *Mills County vs. The Railroad Companies*, cited above, was where the county, claiming lands under the act of congress granting to the state of Iowa certain swamp lands, and the railroad company claiming the same lands under another grant to aid the construction of their railroad, suit was brought in the State Court and determined in favor of the county, and brought to this court by writ of error. While the case was pending here the county and the company came to an agreement, by which the former agreed to convey to the railroad company all the lands in question remaining undisposed of, and also pay $10,000 for lands which it had sold. Notwithstanding the compromise, the case was heard by this court and determined in favor of the county. Thereupon the county brought its bill to avoid the settlement, and the railroad company sued for the recovery of the $10,000.

Again, without discussing the competency of the county to enter into the compromise agreement, this court

held it binding upon the parties, and enforced it against the county.

This case is particularly interesting from the fact that the compromised suit was prosecuted to judgment, and determined in favor of one of the parties, which for that reason sought to avoid the settlement.

So, too, in the case of *The City of St. Louis vs. The United States*, cited above, a compromise between a municipality and the United States was enforced without discussing the competency of the parties to enter into it. Mr. Justice Miller, delivering the opinion of the court, pointed out the circumstances which threw doubt upon the claim of the city of Carondelet. These circumstances were, that the question involved in the dispute had not been settled; that the land department claimed the right to set aside a survey upon which the city's claim rested; and the fact that the government had brought suit for the recovery of the lands and had long occupied the premises in question. The learned judge considered these circumstances as sufficient to justify the city authorities in compromising the matter, and sustaining the deed of Carondelet as based on an equitable compromise of a long pending and doubtful question of title.

The case of *New Albany vs. Burke*, involved the question of the force of a compromise made by a city; and again the competency of a municipal corporation was assumed without discussion.

The case of *The County of Jasper vs. Ballou*, cited

above, is interesting, because, like the one at bar, it involves the validity of county bonds with which a former issue was taken up. In the course of the opinion of the court, the Chief Justice said:

"When, therefore, the people were called on to vote whether the old bonds should be funded, the facts they had to consider were these: A valid law authorizing the subscription and an issue of the bonds had been passed. The people, at an election which had been irregularly called, had voted to make the subscription and issue bonds bearing 10 per cent. interest, and all payable within six years. An act had been passed to legalize the election, and under it the subscription which had been voted was made, and bonds such as had been contemplated had been issued and were then outstanding in the hands of various parties. Whether these bonds were valid was, so far as any direct decisions were concerned, an open question, and certainly not free from doubt. Under these circumstances the question was directly put to the people of the county, in a manner authorized by law, whether they would recognize these bonds as "binding and subsisting legal obligations," and issue in lieu of them other bonds having twenty years to run, and bearing 7 per cent. interest instead of 10, and they by their vote said they would. There is no complaint of any illegality in this election, or of fraud or imposition. So far as the record shows, the proposition to fund went from the county authorities to the bondholders, and not from the bondholders to the county.

The facts were as well known to one party as the other. If the people intended to rely on their defenses to the old bonds, then was the time for them to speak, and by their vote say they would not recognize them as binding obligations. By voting the other way, they, in effect, accepted them as legal and subsisting for the purposes of the proposed extension of time at reduced interest, and said to the holders if their proposition was accepted no question of illegality would be raised. Their offer having been accepted, they are now estopped from insisting upon an irregularity which they have, by their votes, voluntarily waived, with a full knowledge of the facts. The case is clearly, as we think, within the principle acted on by the Supreme Court of the state in *Town of Keithsburg vs. Frick*, 34 *Ill.* 421. As was very properly said below by the learned circuit judge, "there must be an end of these contests and defenses some time or other." There must be a time when the people in their political capacity are concluded by their contracts as much as individuals, and we think that where the people of a county, at an election held according to law, authorize their corporate or political representatives to treat certain outstanding county obligations as "properly authorized by law," for the purpose or negotiating a settlement with the holders, and the settlement which was contemplated has been made, all contests as to the validity of the obligations must be considered as ended."

Here, again, we are without any direct expression of

opinion by the court upon the competency of municipal corporations to compromise disputes arising upon questions of law, but the case shows that the power was assumed.

The cases seem to show very clearly that the Court has always considered a municipal corporation as vested with the power to compromise doubtful controversies, just as any natural person may do.

The grounds for this proposition have been considered and set forth in several of the judgments of the state courts. The *Town of Petersburg vs. Mappin*, 14 *Ill.* 193, is worthy of notice on this account. The town had recovered a judgment against Mappin and others upon a penal bond, and the defendants had obtained leave to prosecute an appeal to the Supreme Court, and were about perfecting the same, when the corporate authorities entered into an agreement to compromise the matter and release the judgment upon the defendants paying the costs. This was done, when the corporation filed a bill against the defendants in the judgment, alleging that there was no valid consideration for the release and satisfaction, and praying that the same might be set aside and an execution issue on the judgment. Chief Justice Treat delivered the opinion of the Court, and said:

"The trustees of the town possess only such powers as are specifically conferred by the act of incorporation, or are necessary to carry into effect the powers expressly granted. They must keep within the limits prescribed by

the charter. If they transcend authority conferred thereby, their acts are not binding on the town or third persons. They have no power to give away the funds of the town, or appropriate them to purposes not warranted by the charter. They must faithfully apply the corporate property to the uses and objects specified in the charter. As they cannot directly dispose of it by way of gratuity, so they cannot accomplish the same result by device or indiscretion. They cannot, under color of a sale, transfer the property of the corporation without consideration; nor can they, under the pretense of satisfaction, discharge a debt due the corporation without payment. But they may sue and be sued, and take all steps necessary to assert and secure the rights of the corporation. The power to prosecute suits on behalf of the corporation includes the power to settle the same. So the power to defend suits brought against the corporation gives them the same power of adjustment. They may compromise doubtful controversies, to which the corporation is a party, either as plaintiff or defendant. The law vests them with a discretion in such matters, which they are to exercise for the best interests of the corporation. A settlement of an existing controversy, if made in good faith, binds the corporation; but if collusively made, it is not obligatory.

"In the present case the trustees had authority to grant the license and take the bond. On a forfeiture of the obligation, they could sue and recover the penalty. They might decline to pursue that course, if satisfied that

no benefit would accrue to the town by so doing. They could compromise the matter by receiving less than the penalty, if they considered the result of a suit upon the bond doubtful, or the collection of a judgment against the obligors uncertain. They brought a suit upon the obligation, and obtained a judgment for the amount of the penalty. But the judgment did not conclusively establish the right of the corporation to recover the money. The obligors had the right to have the case reviewed by the Supreme Court, and they were proceeding to exercise it. The result of their appeal might be to reverse the judgment, and render the corporation liable for all the costs that had accrued in the case. In this state of things a compromise was effected, by which the trustees agreed to abandon the prosecution, and the defendants assumed the payment of the costs. The transaction amounted to a settlement of the pending controversy on those terms. It is not pretended but that the trustees acted in good faith, and with the view of promoting the best interests of the town. In adjusting the controversy, they were acting strictly within the scope of their authority. Whether the arrangement was a judicious one, is not the question. A mere error of judgment will not vitiate the settlement. If it was within the competency of the court to revise this exercise of their discretion, there is nothing in the case to show that the settlement was unwise or improvident, for the proceedings in the action on the bond are not set forth in the record. It may be that it was advantageous to the

corporation. The judgment may have been clearly erroneous, and therefore certainly revisable on appeal."

Section 20 of the general law set forth above impowers the county to sue and be sued. Upon the doctrine of the case in 14 Illinois, cited above, this provision vests in the board the power to compromise a pending action.

But there is much more in the statute than this general provision. Section 22, among other things, expressly provides, "each county shall have power * * * Third—To make all contracts and to do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers."

Here was a contract of compromise and settlement in relation to a very important concern of the county, namely, the avoidance of a judgment for a large sum, which might be presently enforced, by a promise of payment at a remote date. Surely, such a contract was within the corporate powers of the county.

But even this is not all. Section 23 provides: "The county boards of the several counties shall have power * * * * * * * * Second — To manage the county funds and county business, except as otherwise specifically provided. * * * * * * * * Fifth—To examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county."

The settlement between the parties to this suit comes

clearly within each of these clauses. It was emphatically management of county business, and also a settlement of an account against the county, that engaged the commissioners when they compromised this judgment.

The court is further respectfully referred to the following cases:

People vs. Coon, 25 *Cal.* 648.
People vs. Supervisors, 27 *Cal.* 655.
Augusta vs. Leadbetter, 16 *Me.* 45.
Bean vs. Jay, 23 *Me.* 117.

The act of 1877 may be passed over without remark, because, whatever construction may be placed on its terms limiting their operation, the act of 1883, beyond all doubt, covers this precise case.

Section 2 provides for the issue of refunding bonds "heretofore issued by any county which have been held and determined to be valid and binding in the hands of *bona fide* holders thereof, in any action or actions thereon, or on any coupons thereof, in any state or federal court of competent jurisdiction within this state, and such bonds, with the interest thereon, constitute a bonded indebtedness within the meaning of this act."

The special findings of the jury in this case bring the bonds from which the coupons in suit were cut within the section. A "federal court of competent jurisdiction, within this state," that is to say, the United States Circuit Court for the district of Nebraska, had "held and determined that the bonds were valid and binding," and that

Glidden "was a *bona fide* holder thereof," and this is an "action on coupons" cut therefrom.

Furthermore, Section 8 authorized the refunding without regard to the limitation of 10 per cent. of the assessed valuation of the property of the county; thus, in express terms, shutting out the objection which lay to the former issue.

Provided by these express provisions with the means of paying this judgment, the county board had an undoubted right to use them in settling it.

But we have here more than these statutes—we have a judgment of the Supreme Court of the state in favor of the validity of the bonds, by which the county is concluded. The county, in the exercise of unquestionable powers, went into that court and complained of the state officers because they would not certify and register the new bonds with which the old ones were to be taken up. The counsel of the county were heard at the bar, insisting that the new bonds were legal and valid. The court, upon deliberation, so held and determined. Possibly the prevailing opinion does not state this catagorically, but it does in effect, for the peremptory mandamus orders the officers to certify that the bonds are issued according to law, which is as much as for the court to say that such is the fact.

After all that the county has done in securing appropriate legislation and going into court to allege the validity of the new bonds, and then passing them off to us,

thereby obtaining satisfaction of this judgment, how can it pretend that it acted without authority?

THIRD POINT.

It remains to consider whether the court will enforce this compromise and settlement between the parties of the matter which has gone into the judgment, upon this motion to dismiss the writ. The cases are numerous and familiar, so much so that it is not necessary to cite them, where the court has enforced stipulations for the submission of causes pending here for advancing them, etc., etc. The principle of such cases undoubtedly governs that upon which this motion is based. But it is not necessary to resort to analogy to establish the propriety of this motion. In the case above cited of *Mills County vs. The Railroad Company*, a compromise was entered into between the parties pending a writ of error to review a judgment in favor of the county; but the matter was not presented to the court until after the cause was argued and determined.

Inasmuch as this court found for the county, it was perhaps very natural for its corporate authorities to deny the binding force of the settlement and insist upon its rights as declared and adjudged by this court. Accordingly, they instituted a suit for the recovery of the very lands which, under the settlement, they had released to the company. And upon appeal to this court in that case the question presented was as to the effect of the settle-

ment under the circumstances. This court enforced the agreement of compromise.

It was an idle thing for the parties to continue that litigation; for the counsel to argue the cause here, and for this court to render a judgment, when the whole matter was, by the acts of the parties, laid at rest so effectually that even the judgment of this court could not disturb its repose. Surely it had been better to have advised this court of what the parties had done and relieve it of the burden of examining and determining an adjusted dispute.

And so here, these parties having come together and deliberately and intelligently come to an agreement, why should they continue a controversy which cannot result in any advantage to either of them.

Suppose this case goes to argument and judgment, and the opinion of the court shall be in favor of the plaintiff in error. The judgment of the Circuit Court will then be vacated and a new trial ordered; or, at most, a judgment will be entered in favor of the county. What good will that do either of the parties? There can be a recovery of nothing by the county against Glidden, and there can be a recovery of nothing by Glidden against the county. On the other hand, suppose this court shall be of opinion that the judgment of the Circuit Court was right, an affirmance ot that judgment can do no one any possible good.

But we are not left to any such reasoning as this, in support of this motion.

In the case of the *Board of Liquidation vs. The Louisville, etc., R. R. Co.*, above cited, the railroad company being defendant in the appeal, presented the stipulation of the parties to this court, and asked to have the appropriate order entered thereon. This was resisted by the appellant, and the motion to dismiss was considered by the court as "presenting questions too important to be settled summarily on motion, and order the motions to be continued until the present term, when the appeal would be dismissed in accordance with the stipulation, unless the board should begin and prosecute without unnecessary delay in some court of competent jurisdiction an appropriate suit to set aside the compromise."

This shows that the court would in a case free from difficulty dispose of an appeal or writ of error upon motion. And it is submitted that such is the case here.

FOURTH POINT.

It is very clear from the record in this case, and the motion papers, that the parties came together and deliberately and intelligently settled and compromised the matter in dispute between them, the intention being that the county should not prosecute any writ of error against the judgment, but settle and dispose of the whole controversy at once.

The county acted deliberately. It began to consider

the matter of refunding the former issue in June, 1882, and acted finally in December, 1883. Here was a period of eighteen months. In this time it had the subject under discussion eight several times.

It acted intelligently. The record shows that it had the advice of Judge Wakeley and the attorney general. At the very time of the settlement the adjoining county of Dixon, declining to settle, was prosecuting its writ of error.

It acted on its own motion. Glidden and his counsel declined to have anything to do with the proceedings or entertain any propositions of settlement. No charge of fraud can be or is made against him.

What was done with Glidden was to make a final compromise and settlement of the whole dispute and included this writ.

Such is the language of the paper made at the time:

"*Henry H. Glidden vs. Dakota County* — In the United States Circuit Court for Nebraska. *Settled* as follows":

The affidavits filed in support of the motion distinctly aver that the agreement was that no proceedings to reverse judgment should be taken.

The circumstances are inconsistent with any other idea. What good was the transaction to Glidden if he was to be subject to the expense of coming here to resist this writ, and be liable to an adverse decision? What good was it to the county to issue more invalid bonds to

litigate at great expense and public injury?

The settlement in its circumstances was fair and wise, and in its effect conclusive.

The writ of error should be dismissed.

J. M. WOOLWORTH,

Attorney for Defendant in Error.

R. P. RANNEY,

A. P. HODGES,

Of Counsel.

SPECIAL VERDICT.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

HENRY H. GLIDDEN, Plaintiff,
vs.
THE COUNTY OF DAKOTA, Defendant.

We the jury do find specially as follows:

1st. The Springfield Iron Works was a *bona fide* holder of the bonds.

2d. The Plaintiff Glidden was a *bona fide* holder of the bonds.

3d. That the alleged purchase of the bonds by Glidden was on the 8th day of November, 1879, and the amount now due on the three coupons then past due is the sum of $6,884.09-100 (six thousand eight hundred and eighty-four dollars and nine cents.)

4th. That there are now due on the other coupons, being those then attached to the other bonds and not then due, the sum of $7,809.82-100 (seven thousand eight hundred and nine dollars and eighty-two cents.)

5th. We find that the county did pay the three coupons attached to the bonds at the time of their issue, and which first become due.

JOHN R. MANCHESTER, Foreman,
JAMES GRACE,
PHILLIP CASSADY,
CHARLES CHILDS,
D. C. HOWARD,
CHARLES R. DAKIN,
JAS. P. EWING,
PARKER PAGE,
LEWIS PARKER,
PATRICK MCARDLE,
J. W. BROOKS,
CYRUS REYNOLDS.

PROCEEDINGS OF COUNTY COMMISSIONERS.

DAKOTA CITY, NEB., June 29, 1882.

Adjourned meeting.

And now the matter of the compromise and adjustment of the bonded indebtedness of Dakota county on bonds issued on July 1st, 1876, to the Covington, Columbus and Black Hills Railroad company by said county, by the issuance of six (6) per cent. bonds in exchange for and substitution of said indebtedness, was considered and discussed by the board, and on motion the board adjourned to July 15th, 1882, to further consider the same.

Commissioners now adjourned to July 15th, 1882, when they will meet for the purpose of the further consideration of the railroad company's proposition in regard to bonds.

Signed: HENRY REAM,
JOHN BOLER,
E. L. WILBUR,
Board of Commissioners.

Attest:
HENRY STOTT,
County Clerk.

DAKOTA CITY, NEB., July 15, 1882.

Adjourned meeting.

Commissioners met pursuant to adjournment. Present — Commissioners Henry Ream, John Boler and Eugene L. Wilbur, and county clerk, Henry Stott.

And now at this time, on motion, the matter of the settlement of the bonded indebtedness was on this day adjourned to July 24, 1882.

On motion commissioners now adjourned to meet at 9 o'clock a. m., July 24, 1882.

HENRY REAM,
JOHN BOLER,
E. L. WILBUR,
Board of Commissioners.

HENRY STOTT,
County Clerk.

DAKOTA CITY, NEB., July 24, 1882.

Adjourned meeting.

Commissioners met pursuant to adjournment. Commissioners present—Henry Ream, John Boler, E. L. Wilbur, and Henry Stott, county clerk.

On motion the matter of the funding the bonds heretofore issued to the Covington, Columbus and Black Hills Railroad company, was this day adjourned to August 7, 1882.

On motion commissioners now adjourned to meet on the 7th day of August, 1882, at 9 o'clock a. m.

HENRY REAM,
JOHN BOLER,
E. L. WILBUR,
Board of Commissioners.

Attest:
HENRY STOTT,
County Clerk.

DAKOTA CITY, NEB., August 7, 1882.

Adjourned meeting.

Commissioners met pursuant to adjournment. Present—Henry Ream, John Boler and Eugene L. Wilbur, and Henry Stott, county clerk.

The parties representing holders of the railroad bonds of said county not being ready to present the same with blanks for new bonds, and on motion further proceedings therein was adjourned to August 14, 1882.

On motion commissioners now adjourned to August 14, 1882, at 9 o'clock a. m.

HENRY REAM,
JOHN BOLER,
E. L. WILBUR,
Board of Commissioners.

Attest:
HENRY STOTT,
County Clerk.

DAKOTA CITY, NEB., August 14, 1882,

Adjourned meeting.

Commissioners met pursuant to adjournment. Present—Henry Ream, John Boler and Eugene L. Wilbur, and Henry Stott, county clerk.

Now at this time, August 14, 1882, the board of county commissioners met pursuant to adjournment. Present—Henry Ream, John Boler and E. L. Wilbur, and Henry Stott, county clerk, to proceed to the matter of issuing bonds of said county, to take up and refund the 10 per cent. bonds and coupons heretofore issued by said county to aid the Covington, Columbus and Black Hills railroad, on January 1st, 1876. And the said former issue of bonds still being a just debt and legal liability against the county of Dakota, and it being for the best interest of the county to take up the same and issue new 6 per cent.

bonds therefor.

The said county commissioners do hereby order and authorize the execution and issuance of bonds bearing interest at 6 per cent. per annum, from July 1st, 1882, payable semi-annually on the first days of January and July in each year, and running twenty years, from and after July 1st, 1882, and principal payable at the option of the county after ten years from their date, principal and interest payable at Farmers Loan and Trust Company, in city of New York, and such issue shall be to the amount of one hundred and forty-four thousand dollars ($144,000), being the amount of said former issue of bonds unpaid, with coupons and interest thereon to July 1st, 1882; and the chairman of the board of county commissioners of said county is hereby authorized and directed to sign and execute said bonds for and in behalf of the county; and the clerk of said county shall duly attest the same, and affix the seal of said county thereto; and the coupons hereto shall be signed by the clerk of said county; and after the certification and registration thereof as by law provided, the same shall be surrendered respectively to the parties entitled thereto, on the presentation of the former issue of bonds and coupons, for which said respective new bonds shall be issued. Substitution of and exchange for said re-exchange and substitution to be dollar for dollar.

Upon motion commissioners now adjourned to meet

August 26, 1882, at 10 o'clock a. m.

HENRY REAM,
JOHN BOLER,
E. L. WILBUR,
Board of Commissioners.

Attest:
HENRY STOTT,
County Clerk.

DAKOTA CITY, NEB., November 25, 1882.

Adjourned meeting.

Commissioners met pursuant to adjournment. Presenr—Henry Ream, E. L. Wilbur and John Boler, and Henry Stott, county clerk.

Whereas, negotiations are pending between the county of Dakota and the holders of the bonds and coupons issued by said county to the Covington, Columbus and Black Hills Railroad company, for a settlement and adjustment of said indebtedness, which cannot be concluded before January 1, 1883;

And, whereas, some of said coupons became due January 1st, 1878, and an action thereon will be barred January 1st, 1883, unless otherwise arranged;

Therefore, be it resolved by this board, that in view of said pending negotiations in case said settlement is not consummated and no adjustment is made between said county and the holders of said coupons, and suits are thereafter brought within one year on said coupons due January 1st, 1878, the said county will not interpose the plea of the statute of limitation to said actions.

Commissioners now adjourned to meet December 23, 1882, at 9 o'clock a. m.

HENRY REAM,
JOHN BOLER,
E. L. WILBUR,
Board of Commissioners.

Attest:
HENRY STOTT,
County Clerk.

DAKOTA CITY, NEB., December 6, 1883.

Adjourned meeting.

Commissioners met pursuant to adjournment. Present—John Boler, Eugene L. Wilbur and Henry Loomis, and county clerk, Henry Stott.

When the following proceedings were then and there had, to-wit:

Now at this time the following bonds of Dakota county, issued to the Covington, Columbus and Black Hills Railroad company, of the date of January 1st, 1876, payable twenty years after date, number respectively from one to ninety-five, and in the amount of one thousand dollars each, drawing interest at the rate of 10 per cent. per annum, with interest coupons attached, said coupons of the denomination of fifty dollars each, having been taken up and redeemed by the county, by issuing and delivering refunding bonds in lieu thereof, and the commissioners deeming it safer for the county that the bonds thus redeemed be destroyed, the said bonds and coupons were this day in the presence of the said board and others burned and destroyed, to-wit: * * * * *

The above and foregoing bonds and the coupons shown to be attached were all now destroyed by burning with fire in the presence of the following named persons, to-wit: John Boler, Eugene L. Wilbur and Henry Loomis, board county commissioners; and John T. Spencer, attorney; Henry Stott, county clerk, and T. D. Curtis, deputy county clerk.

Thereupon commissioners adjourned to meet December 7th, 1883, when they will meet for the purpose of completing the record in regard to said bonds and coupons destroyed.

JOHN BOLER,
E. L. WILBUR,
HENRY LOOMIS,
Board of Co. Commissioners.

Attest:
HENRY STOTT,
County Clerk.

DAKOTA CITY, NEB., December 7, 1883.

Adjourned meeting.

Commissioners met pursuant to adjournment. Present—John Boler, Eugene L. Wilbur and Henry Loomis, and Henry Stott, county clerk.

When the following proceedings were then and there had, to.wit:

Now at this time in the matter of *Henry H. Glidden vs. Dakota County*—In the United States Circuit Court for Nebraska.

Settled as follows, to-wit:

The amount of Judgment and interest to July 1st, 1883, - - - - - - - -	$15.740 31
Costs due and paid by Glidden, - - - - -	249 43
Total amount due, - - - - - -	$15,989 74
Less amount retained by the county for plaintiffs, Hon. J. M. Woolworth. pursuant to notice filed and in lieu thereof, - - - - -	2,500 00
Balance paid Glidden on judgment and costs in full,	$13,489 74

See Glidden's receipt in full on file in clerk's office.

Also, four coupons, all numbered ten, from bonds numbered seventy-five, seventy-six, seventy-seven and seventy-eight; and four coupons, all number 11, from bonds numbered 75, 76, 77 and 78, and interest on the same to July 1st, 1883, $478; amount of costs paid by Glidden, $32.26, leaving a total balance due Glidden of $14,000, which said amount was paid Henry H. Glidden in the said new refunding bonds, and numbered as follews, to-wit: Bonds numbered respectively 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119 and 120, with coupons numbered one (1) and two (2), from each of said bonds detached by the county as per agreement made on settlement, making in all the sum of $14,000.

The following is a receipt in full of J. M. Woolworth, plaintiff's attorney, in the above entitled cause for such amount retained by the county for said Woolworth:

"Received from Dakota county the sum of two thousand five hundred dollars, as follows: Two thousand dollars in bonds; five hundred dollars in cash, in full settle-

ment of my fee in case of *Glidden vs. Dakota County*, in United States Court of the District of Nebraska, as per lien heretofore filed and notice given.

"Sioux City, Iowa.

"J. M. WOOLWORTH,
"By JOY & WRIGHT, his Agents."

DAKOTA CITY, NEB., May 20, 1884.

Adjourned meeting.

Commissioners met pursuant to adjournment. Present—E. L. Wilbur, Henry Loomis and John Boler, and Henry Stott, county clerk.

* * * * * * *

Resolved, That the county treasurer be and he is hereby authorized and directed to refuse payment of all coupons of the issue of bonds of Dakota county now outstanding which were issued in exchange for the series of bonds formerly issued to the Covington, Columbus and Black Hills Railroad company, for the reason that said bonds are illegal and void.

Whereupon the board adjourned.

E. L. WILBUR,
Attest: HENRY LOOMIS,
HENRY STOTT, JOHN BOLER,
County Clerk Board Co. Commissioners.

STATE OF NEBRASKA, } ss.
DAKOTA COUNTY, }

I, Henry Stott, county clerk, hereby certify that the

foregoing is a true and literal exemplification of the records in this office, as far as had.

In witness whereof, I have set my hand and affixed my official seal this 21st day of August, A. D. 1884.

[SEAL.] HENRY STOTT, County Clerk.
By T. D. CURTIS, Deputy.

TRANSCRIPT OF MANDAMUS CASE.

Pleas before the Supreme Court of the State of Nebraska at a term thereof, begun and held in the city of Lincoln on the 5th day of July, A. D. 1882.

Be it remembered that on the 13th day of October, A. D. 1882, being one of the days of the July term 1882 of said court, the following application for mandamus was filed in the Clerk's office of said court.

STATE OF NEBRASKA, }
IN SUPREME COURT. } ss.

In the matter of the application of Dakota county for a writ of mandamus to S. J. Alexander, Secretary of State, and John Wallichs, Auditor of State of Nebraska.

STATE OF NEBRASKA, }
LANCASTER COUNTY. } ss.

E. Wakely being duly sworn says that he is reliably informed and verily believes it to be true that the bonds of the issue of $144,000 herein controversy were duly registered by the county clerk of Dakota county aforesaid in the manner by law required and that at the time and in the manner required by law said clerk made out and transmitted to said Auditor of State a duly certified and attested statement under seal of such registry.

E. WAKELY.

Subscribed in my presence and sworn to before me this 13th day of October 1882.

GUY A. BROWN,
Clerk Supreme Court.

STATE OF NEBRASKA. }
IN SUPREME COURT. } ss.

Now comes the county of Dakota by its attorneys, Isaac

Powers, Jr., and E. Wakely and moves the court that a writ of mandamus issue to S. J. Alexander, Secretary of State and John Wallichs, Auditor of State of Nebraska, commanding the said Auditor to register in his office, bonds of said county by it issued to the amount of $144,000 particularly described in affidavits and exhibits herewith filed; and commanding the said Secretary of State and said Auditor to endorse on said bonds a certificate by them signed showing that the same are issued pursuant to law, and commanding said Auditor to certify on said bonds the fact that they have been regularly and legally issued and been registered in his office in accordance with the statute in that behalf made.

Oct. 13, 1882.

ISAAC POWERS, JR.
E. WAKELY,
Attorneys for Rel'r.

THE STATE OF NEBRASKA, }
IN SUPREME COURT. } ss.

In the matter of the application of the board of County Commissioners of the county of Dakota for a writ of mandamus to S. J. Alexander, Secretary of State, and John Wallichs, Auditor of State.

STATE OF NEBRASKA, }
LANCASTER COUNTY. } ss.

Henry Ream being duly sworn says that he is one of the county commissioners of the county of Dakota in this state, and further states as follows:

1. On and prior to November 23rd, 1875, the Covington-Columbus and Black Hills Railroad Company was a corporation under the laws of the state of Nebraska with authority by its articles of incorporation to construct a railroad through the

counties of Dakota, Dixon and Cedar and to Columbus in this state.

2. On the 23rd day of November in the year aforesaid the board of county commissioners of said county of Dakota, duly made and entered an order that there be submitted to the electors of said county the proposition that the county of Dakota should issue and donate to the railroad company aforesaid $65,000, and in addition thereto for this extension of its railroad the sum of $30,000 in coupon bonds of said county dated January 1st, A. D. 1875, payable twenty years from their date, with interest at ten per cent. per annum payable semi-annually, the principal and interest payable in New York to aid said company in the construction of its railroad through Dakota county in compliance with its articles of incorporation; and whether the authorities should in addition to the usual taxes annually caused to be collected and levied a tax on the taxable property of said county sufficient to pay the interest on the said bonds as it should become due and, after the year 1880 cause to be levied and collected such further sum as might be necessary to create a sinking fund sufficient to pay the principal of such bonds at maturity. Such bonds to be placed in the hands of John H. Charles as trustee in trust for said company; and when fifteen miles of road; including the road to Jackson should have been completed and trains running thereon the company should be entitled to receive and said trustee should deliver to it $70,000 of such bonds and when such road should have been graded to the county line such trustee should deliver the remainder of such bonds.—And such proposition further specified the route on which said railroad should be constructed and other matters.

And it was then ordered that a special election for the voting

upon said proposition should be held in the several precincts and voting places in said county on the 27th day of November, A. D. 1875.

3. Such election was accordingly held and there were cast for and in favor of said proposition, 486 votes and against the same 94 votes, and the same was adopted by more than two-thirds cast at such election; and on the 5th day of January, A. D. 1876, the county commissioners of said county duly sitting as a board of county commissioners canvassed the votes and declared the result as aforesaid and caused said proposition and result to be entered on the records of said county and a notice of its adoption to be published as by law required in such cases and which was done.

4. Afterwards on the 13th day of March, A. D. 1876, at a meeting of the said board duly held it was ordered and entered of record that the chairman of said board and the county clerk should issue, sign and seal the said bonds and deliver them to said Charles, trustee,—all which was soon afterwards done.

5. Afterwards on the day of September, A. D. 1876, there was made in the records of the said board by the direction of a a majority thereof an entry proporting to show that the conditions on which said bonds were to be delivered to the company had been complied with and to authorize said trustee to so deliver the same; and as afficiant is informed and believes the same were soon afterwards so delivered.

6. The said bonds had endorsed thereon a certain certificate of the county clerk of said county and other matters; and the same were subsequently, in the month of December registered in the office of the county clerk of Dakota county, and also in the office of the Auditor of State of Nebraska and by him cer-

tified as provided by law in such cases; and there was also endorsed thereon a certificate signed by the Secretary and Auditor of State purporting to show that the same were issued pursuant to law.

A copy of one of the said bonds which were all in the same form and all alike endorsed and certified, and of such endorsements and certificates and of one of the coupons thereto attached is herewith presented and submitted.

7. The said bonds having been wholly or mainly negotiated and disposed of by said railroad company taxes were assessed and levied for paying the first three coupons coming due thereon and the same were paid.

8. Afterwards, upon advise that the said county had a valid defense against said bonds and coupons upon the ground of a partial failure of the consideration thereof and especially because the amount of the issue thereof to-wit: $ 5,000 exceeded ten per cent. of the total amount of the taxable property of said county for the year 1875 which amount was the sum of $637,-675, the said county by its board of county commissioners refused to pay the coupons of the said bonds or to continue to levy taxes therefor or for a sinking fund to pay the bonds—and in consequence suits were brought against the county on divers of said coupons by persons or corporations claiming to be bona fide holders thereof; and especially a suit by the Mason Machine Works of Massachusetts, and a suit of Henry A. Glidden both in the circuit court of the United States for the district of Nebraska in both of which judgments were recovered against the county for the amount of coupons in suit. In both cases the defendant employed counsel of experience, and good repute to defend said cause and the same were defended thoroughly; but

it was by said court held and determined that said bonds and coupons were legal and valid in the hands of bona fide holders and that the failure of consideration and the excess in the issue of bonds above ten per cent. as aforesaid could not be pleaded and proved as against such holders.

In consequence of such results and believing that the interest of the county would be promoted by a compromise and settlement with the holders of the bonds and coupons and the substitution therefor of bonds bearing a less rate of interest, the board of county commissioners received and considered proposals for such settlement and substitution and determined to accept them.—And the proceedings of the board touching the same are set forth in the certified transcript thereof herewith presented and submitted.

And thereupon bonds were prepared to be so substituted and were signed and sealed ready for delivery; a copy of one of which bonds, the same being alike so far as could be, and of one of the coupons thereof is herewith presented and submitted.

9. Thereupon the said board presented the said last mentioned bonds to S. J. Alexander, Secretary of State, and John Wallichs, Auditor of State of Nebraska, and requested and demanded that the same be registered and certified by them respectively as required by law in respect of such bonds; and presented to them due and sufficient evidence of all the matters aforesaid necessary or proper to be known to and considered by them in the premises but the said Alexander and Wallichs without any good or sufficient reason therefor, refused and still refuse to either register or certify the same—and by reason of such refusal the said board is and will be unable to effect the exchange of bonds so

as aforesaid proposed and agreed upon.

HENRY REAM.

THE STATE OF NEBRASKA, ss

Subscribed in my presence and sworn to before me this 12th day of October 1882.

[SEAL.] GUY A. BROWN,
Clerk Supreme Court.

(Face of Bond.)

COUPON BOND COUNTY OF DAKOTA.

Registered by the Auditor and by the Secretary of State of Nebraska, under the provisions of the new constitution of the state, adopted 1875.

No. One, $1,000. United States of America, State of Nebraska, County of Dakota.

Interest ten per cent. per annum, payable semi-annually on the first days of January and July, at the Farmers Loan and Trust Company, in the city of New York.

Know all men by these presents: That the County of Dakota, in the state of Nebraska, acknowledges itself indebted and firmly bound by the Covington, Columbus and Black Hills Railroad company or bearer, at the Farmers Loan and Trust Company, in the city of New York, on the first day of January, 1896, together with interest thereon from the first day of January, 1876, until paid, at the rate of ten per cent. per annum, which interest shall be payable semi-annually on the first days of January and July of each year, upon the presentation and delivery at the said Farmers Loan and Trust Company of the coupons of interest hereto severally attached. This bond is one of a series of ninety-five thousand dollars, issued under and in pursuance of an order of the county commissioners of

the county of Dakota, in the state of Nebraska, and authorized by an election held in the said county on the 17th day of December, A, D. 1875, and under and by virtue of Chapter 25 of the General Statutes of Nebraska, and amendments thereto and the constitution of the said state. Article 12, adopted October, A. D. 1875.

In testimony whereof, the county commissioners have caused these presents to be signed by the chairman of the board and attested by the clerk of said county, and affixed the seal of the said county at Dakota City, the county seat, this first day of January, A. D. 1876.

(Signed) J. W. DAVIS,

Chairman of the Board of County Commissioners of Dakota County, Nebraska.

Attest: (Signed) W. C. MCBEATH,

County Clerk Dakota County, Nebr.

Form of coupon attached to Bond No. One, as aforesaid (Coupon No. Three) $50.00.

Dakota County, Nebraska, will pay the bearer hereof at the Farmers Loan and Trust Company. in the city of New York, on the first day of July, 1877, Fifty Dollars, for six months interest on bond No. 1.

(Signed) W. C. MCBEATH,

County Clerk.

(Reverse of Bond.)

Extract from constitution of Nebraska and the General Statutes of the state, authorizing the issue of these bonds:

CONSTITUTION OF NEBRASKA.

Article 12. No city, county, town or other subdivision of

the state shall ever make donations to any railroad unless a proposition so to do shall have been first submitted to the qualified electors thereof, at any election by authority of law. And no bonds or evidences of indebtedness so issued shall be valid, unless the same shall have endorsed a certificate signed by the secretary and auditor of state, showing that the same is issued pursuant to law.

CHAPTER 35—GENERAL STATUTES NEBRASKA.

Section 1. Any county or city is hereby authorized to issue bonds in aid of any railroad, provided the county commissioners shall first submit the question to a vote of the legal electors of the said county.

Sec. 2. The proposition of the question must be accompanied by a provision to levy a tax for the payment of the principal and interest of said bonds, in addition to the usual taxes.

Sec. 3. Any county which shall have issued its bonds in pursuance of this chapter, shall be estopped from pleading want of consideration therefor, and the proper officers may be compelled by mandamus or otherwise to levy the tax herein provided to pay the same. (Acts of 1875, Section 3, page 170.) Whenever the holder of county bonds shall present the same to the auditor of state for registration, the auditor, upon being satisfied that the same are issued according to law, shall register the same in his office in a book kept for that purpose, and shall under his seal of office certify upon such bonds the fact that they have been legally and regularly issued, and that such bonds have been registered in his office in accordance with the provisions of this act.

Sec. 4. Whenever any of the bonds of any county, shall be so registered, the auditor of state shall annually on or before the second Monday of June in each year ascertain the amount of sinking fund and interest accrued and to accrue (before the tax for the next succeeding year shall be levied) upon all bonds registered in his office, and shall certify thereof to the clerk of the county in which such bonds were issued.

Sec. 5. The clerk of any county, upon receiving such certified statement from the auditor of state, shall proceed to ascertain from the assessment roll of such county the amount of taxable property, and what percentage is required to be levied to pay said interest and create a sinking fund in compliance with the certificate of the said auditor. and shall levy such percentage upon the taxable property of said county, and the said taxes shall be collected by the county treasurer in the same manner as other taxes are collected.

CERTIFICATE OF THE COUNTY CLERK.

This certifies that the issue of bonds, of which this is one, amounting in all to ninety-five thousand dollars, is the only issue of bonds that has ever been made by the said county, excepting ten thousand dollars, issued for court house purposes.

The question of issuing said bonds was submitted to people of the county by a resolution of the county commissioners, dated November 23, 1875, in the following form:

Shall Dakoto county issue to the Covington, Columbus and Black Hills Railroad company $95,000 ten per cent. twenty years bonds, payable, both principal and interest, in New York City, and shall a tax be levied in addition to the usual taxes sufficient to pay interest as it comes due and accumulate a sinking fund to pay the principal at maturity?

The question was decided by a vote taken December 27th, 1875, of 486 votes for to 96 votes against.

Witness my hand and official seal this first day of January, A. D. 1876.

[SEAL.] W. C. McBEATH,
County Clerk.

STATE OF NEBRASKA, }
LINCOLN, December 8, 1876. }

We certify that this bond is issued pursuant to law.

(Signed) BRUNO FZCHUCK,
Secretary of State of Nebraska.

(Signed) J. B. WESTON,
Auditor of State of Nebraska.

STATE OF NEBRASKA, }
AUDITOR'S OFFICE, } ss.

I, J. B. Weston, auditor of state, do hereby certify that upon the basis of the data filed in my office, it appears that the attached bond, No. One, has been regularly and legally issued by the county of Dakota to Covington, Columbus and Black Hills Railroad company, and said bond upon presentation thereof by said company, has this day been duly registered in my office in accordance with the provisions of an act entitled "An act to authorize the registration, collection and redemption of county bonds," approved February 25, 1875.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Lincoln, this —— day of ———, 187—.

———— ————,

Registry No. —. Vol. —. Page —. Auditor of State.

UNITED STATES OF AMERICA, }
COUNTY OF DAKOTA, STATE OF NEBEASKA. }

No. 1. $1,000.

Know all men by these presents: That the county of Da-

kota, in the state of Nebraska, acknowledges itself indebted to William Tare and hereby promises to pay William Tare or bearer, the sum of one thousand dollars, at the Farmers Loan and Trust Company, in the city of New York, on the first day of July, 1902, or at the option of said county at any time after the first day of July 1892, together with interest thereon from the first day of July, 1882, until paid, at the rate of six per cent. per annum, which interest shall be payable semi-annually on the first day of January and July of each year, upon the presentation and delivery at said Farmers Loan and Trust Company, in the city of New York, of the interest coupons hereto severally attached. This bond is one of a series of bonds issued under and by authority of and in pursuance of the order of the county commissioners öf the county of Dakota in the state of Nebraska, aud to take up and refund bonds issued by said county of Dakota, on the first day of January, 1876, to aid the Covington, Columbus and Black Hills Railroad company in a work of internal improvement in said county, which bonds bear interest at ten per cent. per annum, and which bonds and interest coupons taken therefrom are still unpaid and a just debt and legal liability against said county. And said bonds are issued under, by authority and in pursuance of an act of the legislature of the state of Nebraska (Laws of 1877, page 224), entitled "An act to authorize the issue of county bonds in certain cases," approved February 19th, 1877, which act is as follows, to-wit:

An act to authorize the issue of county bonds in certain cases:

Be it Enacted by the Legislature of the State of Nebraska:

Section 1. That any county, city, or precinct in the state

of Nebraska which has heretofore voted and issued bonds to aid in the construction of any railroad or other work of internal improvement. and which bonds or any part there still remain unpaid, and remain and are a legal liability against such county and bearing interest at ten per cent. per annum, is hereby authorized to issue coupon bonds at a rate of interest not exceeding eight per cent. per annum, to be substituted in place of and exchange for such bonds heretofore issued, whenever such county, precinct or city can effect such substitution and exchange, which substitutiou and exchange shall be dollar for dollar.

Sec. 2. The new bonds so issued shall have recited thereon the object of its issue the whole of the act under which the issue is made, stating the issue to be pursuant thereof, and shall also state the number, date and amount of the bond, or bonds, for which it is substituted, and such new bond shall not be delivered until the surrender of the bond or bonds so designated.

Sec. 3. The new bonds so issued shall not require a vote of the people to authorize such issue, and they shall be paid and the levy made and the tax collected for their payment in accordance with the laws now governing the said bonds heretofore issued. (Approved February 19, 1877.)

This bond is issued in pursuance of said act, and is issued in substitution of and in exchange for bond No. 1, of $1,000, of said former issue, which said bond was surrendered on the delivery or this bond.

In testimony whereof, the county commissioners of said county of Dakota have caused these presents to be signed by the chairman of the said board and attested by the county clerk of said county, with the seal of said county affixed, at Dakota

City, the county seat of said county, on the 14th day of August, 1882. Attest: HENRY SCOTT,

[SEAL.] County Clerk of Dakota County, Nebraska.

HENRY REAM,

Chairman of the Board of County Commissioners of Dakota County, Nebraska.

COUPON.

Dakota County, Nebraska, will pay the bearer hereof, at the Farmers Loan and Trust Company, at the city of New York, on the first day of January, 1883, thirty dollars for six months interest on bond No. 1.—$30.00. HENRY SCOTT,

County Clerk.

At the regular June meeting, 1882, of the board of county commissioners of Dakota county, begun and held June 19th to June 28th; present, Henry Ream, E. L. Wilber and John Bolen, commissioners, and Henry Stott, clerk, the following, among other proceedings, were had, to-wit:

* * * * * * *

"The matter of the compromise and adjustment of the bonded indebtedness of Dakota county on bonds issued July 1, 1876, to the Covington, Columbus and Black Hills Railroad Company bo said couhty, by the issuance of six per cent. bonds in exchange for and substitution of said indebtedness was considered and discussed by the board, and on motion the board adjourned to July 6th, 1882, to further consider the same."

July 5th, 1882.—Board met pursuant to adjournment. Present—Henry Ream, John Boler, E. L. Wilber, commissioners, and Henry Stott, clerk.

"And now at this time, to-wit, July 5th, 1882, the matter of compromising and refunding the bonds issued by Dakota

county to aid in the construction of the Covington, Columbus and Black Hills Railroad Company came on for consideration. And after due deliberation and being advised in the premises, it is hereby ordered by the board that the proposition heretofore made by the holders of said bonds to surrender said bonds and coupons and have the same cancelled, and to take in lieu thereof new coupon bonds to run twenty years, from the first day of July, 1882, payable at the option of the county, ten years after their date, and to draw interest at the rate of six per cent. per annum, interest payable semi-annually, be, and the same is hereby accepted.

"And the said bondholders are requested to designate some suitable person as their agent, with authority to surrender said bonds and to receive and receipt for such new bonds, and to do such other acts as may be necessary in making such compromise; the bondholders to have the blanks prepared for such new bonds at their own expense.

On motion board adjourns to July 15, 1882.

July 15th, 1882.—Board met pursuant to adjournment Present—Henry Ream. E. L. Wilber and John Boler, commissioners, and Henry Stott, clerk.

"On motion the matter of the completion of the settlement of the bonded indebtedness of said county was on this day adjourned to July 24th, 1882.

July 24th, 1882.—Board met pursuant to adjournment. Present—Henry Ream, E. L. Wilber and John Boler, commissioners, and Henry Stott, clerk.

"On motion the matter of the refunding the bonds heretofore issued to the Covington, Columbus and Black Hills Railroad Company, was this day adjourned to August 7th, 1882.

August 7th, 1882.—The board met pursuant to adjournment. Present—Henry Ream, E. L. Wilbur and John Boler, commissioners, and Henry Stott, clerk.

"The parties representing holders of the railroad bonds of said county, not being ready with blanks for new bonds and to present the same, on motion further proceedings therein was adjourned to August 14th, 1882.

Now at this time, August 14th, 1882, the board of county commissioners met pursuant to adjournment. (Present—Jonn Bolen, Henry Ream, and E. S. Wilber, commissioners, and Henry Stott, clerk), to proceed to the matter of issuing bonds of said county to take up and refund the ten per cent. bonds and coupons heretofore issued by said county to aid the Covington, Columbus and Black Hills Railroad Company on January 1, 1876.

And the said former issue of bonds still being a just debt and legal liability against the county of Dakota, and it being for the best interest of the county to take up the same and issue new six per cent. bonds therefor.

The said county commissioners do hereby order and authorize the execution and issuance of bonds bearing interest at 6 per cent. per annum from July 1st, 1882, payable semi-annually on the 1st days of January and July in each year—and running 20 years from and after July 1, 1882, and principal payable at the option of the county after ten years from their date—principal and interest payable at Farmers Loan and Trust Company in the City of New York, and such issue shall be to the amount of one hundred and forty four thousand ($144,000) dollars, being the amount of said former issue of bonds with unpaid coupons and interest thereon to July 1st, 1882, and the chairman of the

board of county commissioners of said county is hereby authorized and directed to sign and execute said bond for and in behalf of the county and the clerk of the county shall duly attest the same and affix the seal of the county thereto and the coupons the reto attached shall be signed by the clerk of said county and after the certification and registration thereof as by law required, the same shall be surrendered respectively to the parties entitled thereto, on the presentation of the former issue of bonds and coupons for which said respective new bonds shall be issued in substitution of our exchange for said substitution and exchange to be dollar for dollar.

Attest: HENRY STOTT, Clerk. HENRY REAM,
Chairman of Board of Co. commissioners of Dakota Co., Neb.

STATE OF NEBRASKA, }
COUNTY OF DAKOTA. } ss.

I, Henry Stott, Clerk of Dakota county, Nebraska, do hereby certify that the foregoing is a full true, complete and correct copy of the proceedings and record of the board of county commissioners of Dakota county, Nebraska, relative to the matter of the issuance of new six per cent. bonds by said county to take up and refund ten per cent. bonds heretofore issued by said county to aid the construction of the Covington, Columbus and Black Hills Railroad Company—as full true and complete as the same now remains of record in my office.

Witness my hand and the seal of said county on this 16th day of August, A. D. 1882.

HENRY STOTT, County Clerk.

And on the 13th day of October 1882, the following order was entered of record in said cause,

THE STATE OF NEBRASKA EX REL DAKOTA COUNTY, }
VS. S. J. ALEXANDER ET AL. }

On consent of counsel, it is ordered that the alternative writ of mandamus issue as prayed for returnable October 23d, 1882.

And on the 13th day of October 1882, the following alternative writ of mandamus was issued in said cause.

THE STATE OF NEBRASKA }
IN SUPREME COURT. }

To S. J. Alexander, secretary of state and John Wallichs, auditor of state of the state of Nebraska.

Whereas, it has been suggested to us by affidavits of Henry Ream and E. Wakely, on behalf of the county of Dakota relator,

That on and prior to the 23d day of November, A. D., 1876, the Covington, Columbus & Black Hills Railroad company was a corporation under the laws of the state of Nebraska, with authority by its articles of corporation, to construct a railroad through the counties of Dakota, Dixon and Cedar and to Columbus in this state.

That on the day last aforesaid, the board of county commissioners of said county of Dakota duly made and entered an order that there be submitted to the electors of said county the proposition that the county of Dakota should issue and donate to said railroad company $65,000, and in additoin thereto for the extension of its railroad, the sum of $30,000 in coupon bonds of said county, dated January 1st, 1876, payable twenty years from their date with interest at ten per cent. per annum; the principal and interest payable semi-annually in New York to aid said railroad company in the construction of its railroad through

Dakota county, in compliance with its articles of incorporation; and that the authorities should in addition to the usual taxes, annually cause to be levied and collected a tax on the taxable property of said county, sufficient to pay the interest on the said bonds as it should become due, and after the year 1880 cause to be levied and collected such further sum as might be necessary to create a sinking fund sufficient to pay the principal of such bonds at maturity.

That such bonds be placed in the hands of John H. Charles as trustee in trust for said company; and when fifteen miles of road, including the road to Jackson, should have been completed, and the trains running thereon, the said company should be entitled to receive, and said trustee should deliver to it $ 70,000 of such bonds, and when such road should have been graded to the county line, such trustee should deliver the remainder of the bonds, and which proposition also specified the route on which said road should be constructed, and other matters;

That it also be ordered that a special election for the voting upon such proposition should be held in the several precincts and voting places of said county on the 27th day of November, A. D., 1875.

That such election was accordingly held, and thereat there were cast for and in favor of said proposition 486 votes, and against it 94 votes, and the proposition was adopted by more than two-thirds of the votes cast at said election.

That on the 5th day of January 1876, the county commissioners of said county, sitting as a board of county commisioners canvassed the votes aforesaid and declared the result as aforesaid, and caused said proposition and result to be entered

on the records of said county, and a notice of the adoption of said proposition to be published as by law required in such cases, and which was done.

That afterwards on the 13th day of March, A. D., 1876, at a meeting of the said board duly held, it was ordered, and so entered of record, that the chairman of said board, and the county clerk of said county, should issue and seal the said bonds and deliver them to said Charles, trustee, all of which was soon afterwards done.

That afterwards, on the day——of September 1876, there was made in the records of said board, by the direction of a majority thereof, an entry purporting to show the conditions on them, and as said bonds were to be delivered to the said company had been complied with, and to authorize said trustee to so deliver the same, and that the same were soon afterwards so delivered;

That the said bonds had endorsed thereon a certain certificate of the county clerk of said county and other matters; and the same were subsequently in the month of December 1876, registered in the office of the county clerk of Dakota county, and also in the office of the auditor of the state of Nebraska, and by him certified as provided by law in such cases, and that there was also endorsed thereon a certificate of the secretary of state and auditor of state of Nebraska, purporting to show that the same were issued according to law, a copy of one of which bonds, the same all being in the same form, and all alike endorsed and certified, and of such endorsements and certificates, and of one of said coupons being hereto attached and made a part hereof;

That the said bonds having been wholly or principally ne-

gotiated and disposed of by said railroad company, taxes were levied for paying the first three coupons coming due thereon, and such coupons were paid;

That subsequently the said county, by its board of county commissioners, refused to pay any coupons of said bonds, or to continue to levy taxes therefor, and for a sinking fund to pay the bonds, and such coupons as aforesaid, and said bonds remain unpaid; such refusal being upon the advice that said county had a valid defense against said bonds and coupons, upon the grouud of a partial failure of the consideration thereof; and especially because the amount of the issue of such bonds, to-wit; $95,000 exceeded ten per cent. of the assessed valuation of said county of Dakota for the year 1875, which assessed valuation was the sum of $637,665;

That in actions thereafter brought against said county upon certain of unpaid coupons in the Circuit Court of the United States, for the district of Nebraska, by persons and corporations claiming to be bona fida holders thereof, and in which actions thorough defense was made by said county, it was by the said court held and determined that said bonds and coupons were legal and valid in the hands of bona fida holders thereof, and the excesses in the issue of said bonds above the per. cent of said assessed valuation could not be pleaded and provided against such holders, and that judgments in said actions were rendered against said county upon the coupons aforesaid;

That the board of county commissioners of said county, believing that the interest of said county would be promoted by substituting and exchanging for the bonds and coupons aforesaid, bonds of said county bearing a less rate of interest with coupons, therefore has received and considered proposals for

compromise and settlement with the holders of such unpaid bonds and coupons by such substitution and exchange as aforesaid, and has determined to accept such proposals, and has taken such proceedings in the premises as are set forth and shown in and by a certified copy thereof, hereto attached and made a part hereof; and has prepared to be so substituted and exchanged and cause to be signed and sealed ready for delivery, the bonds in said proceedings mentioned to wit; bonds dated July 1st 1882, bearing interest at 6 per. cent per annum, payable semi-annually on the first day of January and July in each year, running twenty years from date, and the principle payable at the option of the county after ten years from their date, principal and interest payable at the Farmers Loan and Trust company in the city of New York, and to the amount of $144,000, being the amount of said former issue of bonds with the unpaid coupons and interest to July 1st 1882.

A copy of one of said bonds, which are alike in form and substance, and one of the coupons thereof is hereto attached and made a part hereof. That said bonds were duly registered, and registration of all matter in that behalf required were duly made by and in the office of the county clerk of said county of Dakota.

That the said board or dounty commissioners has presented to you, the secretary of state, and to you the said auditor of state of Nebraska, the bonds last aforesaid, with due sufficient date and evidence of all the matters aforesaid, or necessary or proper to be known to, and considered by you in the premises, and has requested and demanded that you, the said auditor, register the said bonds, as by law required in the premises; and that you certify upon said bonds that they have been regularly

and legally issued and have been duly registered as in such case by law provided; and that you, the said auditor, and you, the said secretary of state of Nebraska, certify and sign a certificate endorsed on said bonds, showing that the same are issued according to law, and that you, and each of you, have, and has refused so to do, or to do any of said things.

Now, therefore, we being willing that full and speedy justice should be done in the premises, do command you, that you, the said John Wallichs, auditor as aforesaid, do forthwith register the aforesaid bonds of the issue of $144,000, as aforesaid, in your office in the manner in that behalf by law required, and that you certify upon such bonds the fact that they have been regularly and legally issued, and that they have been registered in your office in accordance with the statute of this state in that behalf made and enacted.

And that you, the said S. J. Alexander, secretary of state, and you the said John Wallichs, auditor of state as aforesaid, do forthwith endorse on the said last mentioned bonds a certificate signed by you that the same are issued pursuant to law; or that you appear before the supreme court at the city of Lincoln on the 23d day of October, A. D. 1882, at 10 o'clock a. m. to show cause why you refuse so to do.

Witness: George B. Lake, chief justice of the supreme court, and the seal of the said court hereto affixed, this 13th day of October, A. D. 1882.

GEORGE B. LAKE,
Chief Justice.

And on the 28th day of October, A. D. 1882, the following answer and return to said writ was filed in said cause;

IN THE SUPREME COURT
OF THE STATE OF NEBRASKA.

State of Nebraska, ex rel. Dakota County,
vs.
S. J. Alexander, Secretary of State, and
John Wallichs, Aud. Pub. Accounts of Nebraska.

ANSWER AND RETURN TO THE WRIT.

And now comes the said defendants, S. J. Alexander, secretary of state of the state of Nebraska, and John Wallichs, auditor of public accounts of the state of Nebraska, and for return to the said alternative writ issued in this case, and as a reason why a peremptory writ should not issue against them to register said bonds mentioned in said alternative writ, state that the reason why these defendants failed and refused to register said bonds was because the said county had no right to issue the same and had not complied with the law in relation thereto.

That when the said bonds for ninety-five thousand dollars were issued the assessed valuation of all the property of said Dakota county was only six hundred and thirty-seven thousand six hundred and sixty-five dollars, and at no time prior to that time did the assessed valuation of the county exceed that amount. And these respondents aver that the said bonds exceeded the amount of ten per cent. upon the assessed valuation of said property by the amount of several thousand dollars.

And further answering, these respondents say, that the bonds which were presented to these respondents to register were bonds that were issued in place of the said $95,000, and amounted to the sum of $144,000. That at the time when said last bonds were issued, no proposition or vote had been submitted to the voters of said Dakota county, and in addition the said last mentioned bonds were also largely in excess of the said

ten per cent. of the assessed valuation of the taxable property of said Dakota county.

Wherefore defendants ask that they may be discharged with their reasonable costs.

S. J. ALEXANDER,
Secretary of State.
JOHN WALLICHS,
Auditor Pub. Acts.

STATE OF NEBRASKA:

I, John Wallichs, auditor public accounts, one of the respondents in the above entitled action, do solemnly swear that I believe the facts stated in the foregoing return and answer to be true.

Subscribed in my presence and sworn to before me this 28th day of October, 1882. JOHN WALLICHS.

GUY. A. BROWN, Clerk Supreme Court.

And on the 10th day of February, 1883, the following proceedings were had and done in said court:

SATURDAY, FEBRUARY 10, 1883.

Court met pursuant to adjournment. Present as before.

STATE, ETC., EX REL., DAKOTA COUNTY, vs. S. J. ALEXANDER, ET AL. } 1526.

ORIGINAL MANDAMUS.

This cause came on for hearing upon the alternative writ of mandamus heretofore issued and the return thereto, and was submitted to the court, on consideration whereof the court finds the issues in favor of the relator. It is therefore considered by the court that a peremptory writ of mandamus issue against said respondents, commanding them, the said John Wallichs, auditor of public accounts, to forthwith register the bonds of

said county of the issue of $144,000, dated July 1, 1882, in his office and to certify upon such bonds the fact that they have been registered in his office in accordance with the statute of this state, and that he and the respondent secretary of state forthwith endorse on said bonds a certificate signed by them that the same are issued pursuant to law, and that the relator pay the costs of this suit, taxed at $——

And on the 10th day of February, 1883, the following peremptory writ of mandamus was issued in said cause.

IN THE SUPREME COURT OF THE STATE OF NEBRASKA, }
THE STATE OF NEBRASKA. }

JANUARY TERM, 1883.

To S. J. Alexander, Secretary of State, and John Wallichs, Auditor of Public Accounts, and to each of their successors in office, GREETING:

WHEREAS, it has been suggested to us by the affidavit of Henry Ream and E. Wakely on behalf of the county of Dakota, relator that on and prior to the 23d day of November, A. D. 1876, The Covington, Columbus and Black Hills Railroad Company was a corporation under the Laws of the state of Nebraska with authority by its articles of the corporation to construct a railroad through the counties of Dakota, Dixon and Cedar and to Columbus in this state. That on the day last aforesaid the board of county commissioners of the said county of Dakota duly made and entered an order that there be submitted to the electors of said county the proposition that the county of Dakota should issue and donate the said railroad company $65,000 and in addition thereto for the extension of the railroad the sum of $30,000 in coupon bonds of said county dated January 1st, 1876, payable twenty years from this date with interest at ten per

cent. per annum the principal and interest papable semi-annually in New York to aid said railroad company in the construction of its railroad through Dakota county in compliance with its articles of incorporation; and that the authorities should in addition to the usual taxes annually caused to be levied and collected a tax on the taxable property of said county sufficient to pay the interest on the said bonds as it should become due and after the year 1880 cause to be levied and collected such further sum as might be necessary to create a sinking fund sufficient to pap the principal of such bonds at maturity and such bonds should be placed in the hand of John H. Charles as trustee in trust for said company; and when fifteen miles of road including the road to Jackson should have been completed and trains running thereon the said company should be entitled to receive and said trustee should deliver to it $70,000.00 of such bonds and when such road should have been graded to the county line such tsustee should deliver tbe remainder of the bonds and which propcsition also specified the route on which said road should be constructed and other matters that it was also thus ordered that a special election for the voting upon such proposition should be held in the several precincts and voting places in said county on the 27th day of November, A. D. 1875, that such election was accordingly held and thereat there were cast for and in favor of said proposition 485 votes and against it 94 votes and the same was adopted by more than two-thirds of the votes cast at said election; that on the 5th day of January 1876 the county commissioners of said county duly sitting as a board of county commissioners canvassed the vote aforesaid and declared the result as aforesaid and caused said proposition and result to be entered on the records of said county and a notice of the

adoption of said proposition to be published as by law required in such cases and which has been done; and afterwards on the 13th day of March. A. D. 1876, at a meeting of the said board duly held it was ordered and so entered of record that the chairman of said board and the county clerk of said county shall issue sign and seal said bonds and deliver them to said Charles trustee, all of which was soon afterwards done; that afterwards on the day of September, A. D. 1876, there was made in the records of the said board by the direction of a majority an entry purporting to show that the conditions on which said bonds were to be delivered to said company had been complied with and to authorize said trustee to so deliver the same and that the same were soon afterwards so delivered: that the said bonds had endorsed thereon a certain certificate of the county clerk of said county and other matters and the same were subsequently in the month of December 1876 registered in the office of the rounty clerk of Dakota county and also in the office of the Auditor of the state of Nebraska and by him certified to as provided by law in such cases and that there was also endorsed thereon a certificate of the secretary of state and auditor of state of Nebraska purporting to show that the same were issued pursuant to law. That the said bonds having been wholly or principally negotiated and disposed of by said railroad company taxes were levied for paying the first three coupons coming due thereon and such coupons were paid; that subsequently the said county by its board of county commissioners refused to pay any coupons of the said bonds or to continue to levy taxes therefor or for a sinking fund to pay the bonds and such coupons except as aforesaid and said bonds remain unpaid and such refusal being upon advise that said county had a valid defence against said

bonds and coupons upon the grounds of a partial failure of the consideration thereof and especially because the amount of the issue of said bonds to-wit: $95,000 exceeded ten per cent. of the assessed valuation of said county of Dakota for the year 1875 which assessed valuation was the sum of $637,665. That in actions thereafter brought against said county upon certain of said unpaid coupons in the circuit court of the United States for the district of Nebraska by persons and corporations claiming to be bona fide holders thereof and in which actions thorough defence was made by said county it was by the said court held and determined that said bonds and coupons were legal and valid in the hands of bona fide holders thereof and that failure of consideration and the excess in the issue of said bonds above ten per cent. of said assessed valuation could not be pleaded and proved against such holders, and that judgments in said actions were rendered against said county upon the coupons aforesaid, that the board of county commissioners of said county, believing that the interests of said county would be promoted by substituting and exchanging for the bonds and coupons, aforesaid bonds of said county bearing a less rate of interest with coupons therefor, has received and considered proposals for compromise and settlements with the holders of such unpaid bonds and coupons by such substitution and exchange as aforesaid, and has determined to accept the said proposals, and has taken due proceedings in the premises, and has prepared to be so substituted and exchanged, and caused to be signed and sealed ready for delivery the bonds as aforesaid to wit, bonds dated July 1st, 1882, bearing interest at six per cent. per annum, payable semi-annually on the first days of January and July in each year, running twenty years

from date, and the principal payable at the option of the county after ten years from their date, principle and interest at the Farmers' Loan and Trust company in the city of New York, and to the amount of $144,000, being the amount of said former issue of bonds with unpaid coupons and interest to July 1st, 1882; That said bonds were duly registered, and registration of all matters in that behalf required, was duly made by and in the office of the county clerk of said county of Dakota: that the said board of county commissoners has presented to you, the said secretary of state, and you, the said auditor of public accounts of the state of Nebraska, the bonds last aforesaid, with due and sufficient data and evidence of all the matters aforesaid or necessary or proper to be known to or considered by you in the premises, and has requested and demanded that you, the said auditor, register the said bonds as by law required in the premises, and that you certify upon said bonds that they have been regularly and legally issued, and have been duly registered as in such case by law provided; and that you, the said auditor, and you, the said secretary of state of Nebraska, certify and sign a certificate endorsed on said bonds, showing that the same are issued pursuant to law, and that you, and each of you, have, and have and has refused so to do, or to do any of said things.

Now therefore, we being willing that full and speedy justice should be done in the premises, do command you, that you and the said John Wallichs, auditor as aforesaid, do forthwith register the aforesaid bonds of the issue of $144,000, as aforesaid in your office in the manner in that behalf by law required; and that you certify upon such bonds, the fact that they have been regularly and legally issued, and that they have been registered in your office in accordance with the statute of this

state, made and enacted, and that you, the said S. J. Alexander, secretary of state, or your successor in office, and you, the said John Wallichs, auditor of state, as aforesaid, do forthwith endorse on the said last mentioned bonds, a certificate signed by you, showing that the same are issued pursuant to law, and that you return to this court this writ, with your return thereon endorsed, as having done as you are hereby commanded.

Witness Hon. George B. Lake, chief justice of the Supreme Court, and the seal thereof hereto affixed this day of February, A. D. 1883.

GUY A. BROWN, Clerk.

Endorsed as follows:

SUPREME COURT OF NEBRASKA.

The State etc., ex rel. Dakota county vs. S. J. Alexander at al.

Peremptory writ of mandamus, allowed in open court, this February 10th, 1883. GEO. B. LAKE,

(Filed February 13th, 1883.) Chief Justice

GUY A. BROWN, Clerk.

STATE OF NEBRASKA, ss.

I, Hiland H. Wheeler, bailiff of the Supreme Court of Nebraska, do hereby certify that on the 13th day of February, 1883, I served the writ of which the within is a copy, by delivering an original to Edward P. Roggen, secretary of state, successor of the within named S. J. Alexander, and a like original to the within named John Wallichs.

HILAND H. WHEELER,
Bailiff Supreme Court.

On the 23d day of March, 1883, we performed the within

command by registering and certifying the within described bonds as therein commanded.

JOHN WALLICHS,
Auditor P. A.

J. H. ALFRED, Deputy.

E. P. ROGGEN,
Secretary of State.

STATE OF NEBRASKA, ss.

I hereby certify that the foregoing is a true, complete and correct copy of the record in this court in the case of *State of Nebraska ex rel. Dakota County vs. S. J. Alexander et al.*

In testimony whereof, I have hereunto set my hand and official seal this 27th day of August, 1884.

[SEAL.]

GUY A. BROWN,
Clerk Supreme Court.

AFFIDAVITS.

IN THE SUPREME COURT OF THE UNITED STATES.

The County of Dakota,
Plaintiff in Error,
vs.
Henry H. Glidden.

DISTRICT OF NEBRASKA, ss.

J. M. Woolworth, being duly sworn, says: While this case was pending in the United States Circuit Court I was the sole attorney for the plaintiff, Glidden. Under the statute of Nebraska a judgment against a county can only be collected by a mandamus upon the county officers to compel the levy and collection of a tax to raise money for that purpose, and these proceedings cannot be taken until six months after the judgment is rendered. The attorneys for the county were Messrs. Wakely and Powers and they informed me repeatedly of their purpose to carry the case to the Supreme Court by writ of error.

About the time when I became entitled under the statute to apply for a mandamus, Judge Wakeley informed me that it was the purpose of the county officers to refund all the bonds of the issue to which those belonged from which the coupons in this case were detached. My client, Mr. Glidden, refused to commit himself in any way to the acceptance of bonds of the new issue for those of the old which he held, nor did he finally agree to accept the same until at or before the transaction detailed by him in his affidavit. I, however, believed it was best for him

to come into the funding arrangement, and had repeated conversations with Judge Wakeley, representing the county, and also with Mr. Wright of Sioux City, who represented the other bondholders. In my conversations with Judge Wakeley it was distinctly stated by him that the proposition of the county was, by means of the new bonds, to settle and adjust the judgment of Glidden, so as to relieve both sides of the expense and uncertainty of proceedings to reverse the judgment. Nor would I have advised my client, nor, as I believe, would he have consented to accept the new bonds except upon the basis of a settlement of his judgment and relief from the writ of error.

I served the county with a notice to retain $2,500 of the amount going to Glidden on the judgment for me as my fee in the case. After Glidden had received what was going to him on his judgment, the county paid to Mr. Wright for me the $2,500, as appears by a receipt given to the county set forth in the transcript of the proceedings of the commissioners filed in support of this motion. And in pursuance of my understanding and agreement with Judge Wakeley and Mr. Wright, each of them, I received that sum as upon a compromise and settlement of the judgment. Nor would I have taken it with any other idea. The act of February 28, 1883, was passed by the legislature upon the application of parties representing the county. J. M. WOOLWORTH.

Subscribed in my presence and sworn to before me

this 23d day of September, A. D. 1884.

[SEAL.] JAMES P. ENGLISH,
Notary Public.

EASTERN DISTRICT OF MICHIGAN, ss.

Henry H. Glidden, being duly sworn, says: I am defendant in error in the above entitled cause. J. M. Woolworth, Esq., was my sole attorney while the case was pending in the Circuit Court. I was informed from time to time by him after the judgment was recovered that the county proposed to settle and adjust my judgment together with the bonds from which the coupons were detached upon which my suit was based. I gave him no directions for proceeding to collect the judgment, but continually refused to accept new bonds for my old ones and for my judgment, until on or about June 23d, 1883. At that time I visited Dakota City, the county seat of the county, and there met John Boler, chairman of the county commissioners, Isaac Powers, who was of counsel for the county at the trial of the case in the Circuit Court, and at this time attorney general for the state of Nebraska, the clerk of the county and the local counsel for the county, whose names I am unable to recall, when we had together conversations looking to a settlement of my claim against the county. In these conversations it was distinctly stated by Boler and the other persons present that they on behalf of the county and the citizens of the county generally were satisfied that they could not maintain their defense to suits upon the bonds, and that they desired to settle and

compromise with all of the holders of bonds and coupons all matters of difference, and pay them off by new bonds which they then proposed to issue. It was also then and there distinctly stated between us that if I would accept new bonds for my judgment and for the old ones which I held, it should be in full payment and satisfaction of the judgment, and that no proceedings should be taken to reverse the same. One principal motive which I had for coming into the settlement was to relieve myself of the expense of defending a writ of error from this court, and the delay to which I was likely to be subjected if such writ were issued in realizing the amount of the judgment. Nor would I have entertained any proposition except to receive the amount of my judgment in money according to the terms of it, unless I had distinctly understood that the settlement was to relieve me of the expense and delay incident to such writ of error.

The county then and there voluntarily agreed to pay me in full accord, satisfaction and compromise of all differences between it and me, sixteen thousand four hundred and sixty-seven and 74-100 dollars ($16,467 74) as follows:

On account of judgment and interest, - - -	$15,740 31
On account of costs, - - - - - - -	249 43
Eight coupons thereon (not in suit), - - -	478 00
Total, - - - - - - - -	$16,467 74

Payments were made thereon as follows: Paid to me

in funding bonds, $13,967.74; the remainder, that is $2,500, was left by me with the county to be paid to Mr. Woolworth on account of his fees in said case. I gave the county a receipt, which runs as follows:

"DAKOTA CITY, NEB., June 23d, 1883.

"Received of Dakota County, Nebraska, through John Boler, chairman of the board of county commissioners, thirteen thousand four hundred and eighty-nine and 74-100 dollars, on account of judgment and costs in case of *Henry H. Glidden vs. County of Dakota*, in U. S. Circuit Court for District of Nebraska, to-wit:

Fourteen bonds with January and July, 1883, coupons off, - - - - - - - -		$14,000 00
Less due on eight coupons from bonds 75, 76, 77 and 78, - - - -	$478 00	
Less cash advanced by Glidden, - -	32 26	
		510 26
Balance to apply on judgment, - - -		$13,489 74

HENRY H. GLIDDEN,

Subscribed in my presence and sworn to before me this 29th day of September, A. D. 1884.

[SEAL.] WALER S. HARSHA,

Clerk U. S. Circuit Court, Eastern District of Michigan.

DISTRICT OF IOWA,
STATE OF IOWA,
WOODBURY COUNTY. } ss.

I, Craig L. Wright, being duly sworn, do depose and say that in 1883 and for several years prior thereto I was

a member of Joy & Wright, attorneys at law at Sioux City, Iowa, and am now a member of the firm of Joy, Wright & Hudson, attorneys at said place. That during the years 1879, 1880, 1881 and 1882 said firm of Joy & Wright were attorneys for various bondholders holding bonds issued by the counties of Dakota and Dixon, in the state of Nebraska, in 1876, to aid the Covington, Columbus and Black Hills Railroad company, which company constructed and operated a railroad through said counties, and which bonds were issued on a vote of the people of said counties.

That after the said county of Dakota had paid two or three of the coupons on said bonds so issued by said county, they declined to pay the other coupons as they became due, and suits were brought on some of said coupons against said county of Dakota by the holders of said coupons in the United States Circuit Court for the District of Nebraska, and suits were also brought at about the same time against Dixon county in said court on similar coupons taken from the bonds issued by said county of Dixon. That several of said suits so brought on said coupons were tried in said court, all resulting adversely to said counties of Dakota and Dixon and in favor of the validity of said bonds and coupons. That in 1882 negotiations were commenced between the holders of said bonds and coupons so issued by Dakota county and the proper authorities of said county with a view of compromising and settling said litigation then pending on said

coupons against said county. That said firm of Joy & Wright had charge of said negotiations for the bondholders, and affiant personally attended to the same. That propositions were made by the bondholders through deponent to said county for said compromise and propositions made by the said county of Dakota to the bondholders, and after several meetings were had between deponent, acting for said bondholders, and the county commissioners of Dakota county, it was agreed and determined that a compromise and settlement of all of the said original issue of bonds and coupons issued to said Covington, Columbus and Black Hills Railroad company, should be made on the basis of extending the time of payment of said indebtedness represented by said bonds and coupons, and reducing the rate of interest. That the original bonds bore interest at the rate of ten per cent. and became due in 1896, and by the terms of the compromise and settlement the time of payment of said indebtedness was extended to August, 1902, and the rate of interest thereon was reduced to six per cent. That in pursuance of said compromise and settlement the county of Dakota in August, 1882, issued new bonds to said bondholders of said original issue of bonds under the provisions of the laws of the state of Nebraska, approved February 19, 1877, to take up and be substituted for said original issue, coming due in August, 1902, and bearing interest at six per cent. per annum. That all of said bonds and coupons originally

issued by said county of Dakota to said railroad company were in pursuance of said compromise and settlement surrendered by said bondholders, and the coupons also, and said new bonds coming due in 1902, and bearing interest at six per cent. were issued in lieu thereof. That said bondholders surrendered by virtue of said compromise and settlement a ten per cent. bond, due in 1896, for a six per cent. bond, due in August, 1902; and at the time said compromise was made the courts in the several causes brought upon that class of coupons had determined them in favor of the validity of said bonds and coupons, and the said questions involved still being in dispute, either in other suits on similar bonds or pending on appeal to the Supreme Court of the United States, for the purpose of settling and compromising the same, the said bondholders made a material concession to the county of Dakota and took said new bonds as aforesaid and made said compromise and settlement.

That in said compromise and settlement the judgment of Henry H. Glidden against Dakota County, rendered June 28, 1882, in the United States Circuit Court for the the District of Nebraska, (from which judgment this proceeding in error was taken), being in judgment on the coupons taken from said original bonds, the said county of Dakota issued new bonds coming due in August, 1902, as aforesaid, and bearing interest at six per cent. per annum, and in the spring of 1883 said new bonds were delivered by said county of Dakota to said Henry H. Glid-

den and to his attorneys to fully satisfy and discharge said judgment, and in said compromise and settlement said county of Dakota exacted and said Henry H. Glidden and his attorneys executed and delivered to said county a full receipt for the payment of said judgment in full, and said county of Dakota now holds (if the same has not been destroyed by said county) said receipt, and said judgment was satisfied and paid under the terms of said compromise and settlement upon the delivery of said new bonds to said Henry H. Glidden and his attorneys, and the same were delivered to said Henry H. Glidden and his attorneys. That said judgment and indebtedness was so compromised and settled, together with the balance of said original issue of bonds and coupons, after frequent negotiations had between said county and deponent, representing the said Glidden and the said bondholders, and after deponent so acting for them had made material concessions to said county, and to settle and compromise and indebtedness still in litigation between the said parties, and said settlement was made with the understanding and agreement that said cause of Glidden against said county of Dakota should be no further prosecuted, and that said county of Dakota would take no steps to appeal said cause to the appellate court, and said compromise, settlement and agreement was made with the full knowledge, consent and advice of all of the attorneys acting for said county of Dakota in matter of the litigation in reference

to said bonds and coupons. CRAIG L. WRIGHT.

Subscribed in my presence and sworn to before me by the said Craig L. Wright this 20th day of September, 1884. A. L. HUDSON,

Notary Public in and for said County.

113-222

FILED.
DEC 29 1884
JAMES H. McKENNEY.

—IN THE—

SUPREME COURT

OF THE

UNITED STATES.

No. 921.

THE COUNTY OF DAKOTA,
Plaintiff in Error,
vs.
HENRY H. GLIDDEN,
Defendant in Error.

MOTION TO DISMISS WRIT OF ERROR.

BRIEF OF PLAINTIFF IN OPPOSITION TO THE MOTION.

A. J. POPPLETON,
J. M. THURSTON,
Counsel of Plff. in Error.

On the first day of January, 1876, the county of Dakota, in the state of Nebraska, issued its coupon bonds in aid of the construction of the Covington, Columbus and Black Hills Railroad Company to the amount of $95,000, par value. They were twenty year bonds bearing interest at ten per cent., and were claimed to be issued in accordance with law. Several of the bonds having come into the hands of the defendant in error he brought suit on defaulted coupons in the Circuit Court

of the United States for the District of Nebraska and on the 28th day of June, 1882, and recovered a judgment, the case having been tried by a jury. The present writ of error is to that judgment. The motion to dismiss is not aimed at any irregularity or defect of procedure in bringing the case here by writ of error, but solely on an original and outside showing here in this Court, for the first time made, namely, that the case has since the rendition of the judgment been compromised.

It is to be borne in mind that nothing in the record of the pending suit shows that the claim has been paid, or in any other manner compromised, satisfied or discharged. This showing rests wholly upon exparte statements and affidavits outside the case and not upon the record itself.

We have been unable to find a single case wherein such a question has been raised on motion, and we think none can be produced. In the cases cited by defendant in error the question of the validity of the compromise was directly in issue, was raised by the record, constituted a ground of action or defense and was disposed of upon final hearing. It seems the purpose and object of this motion to avoid the vital questions involved, namely, the validity of the bonds of January 1st, 1876, and dispose of the case by means of a flank assault of exparte affidavits. We think the vital question involved even in this flank movement and shall so seek to show to the court.

The compromise set up is this: That after the rendition of the judgment on the bonds of 1876, and before the present writ of error was sued out, the county and the defendant in error compromised their differences, the county issuing new 6 per cent. bonds, dated August 14, 1882, and exchanging them for the old 10 per cent. bonds of 1876; and that this exchange was a compromise and satisfaction of Glidden's claim, and ought not to be disturbed by the Court.

Copies of the body of the two bonds are here given for convenience of reference.

TEN PER CENT. BOND OF JANUARY 1, 1876.

(Face of Bond.)

COUPON BOND, COUNTY OF DAKOTA.

Registered by the Auditor and by the Secretary of State of Nebraska, under the provisions of the new constitution of the State, adopted 1875.

No. 1. $1,000.

UNITED STATES OF AMERICA,
STATE OF NBBRASKA, COUNTY OF DAKOTA.

Interest 10 per cent. per annum, payable semi-annually, on the first days of January and July, at the Farmers' Loan and Trust Company, in the city of New York.

KNOW ALL MEN BY THESE PRESENTS: That the county of Dakota, in the State of Nebraska, acknowledges itself indebted and firmly bound by the Covington, Columbus and Black Hills Railroad Company, or bearer, at the Farmers'

Loan and Trust Company, in the city of New York, on the first day of January, 1896, together with interest thereon from the first day of January, 1876, until paid, at the rate of 10 per cent. per annum, which interest shall be payable semi-annually on the first days of January and July of each year, upon the presentation and delivery of the said Farmers' Loan and Trust Company of the coupons of interest hereto severally attached. This bond is one of a series of ninety-five thousand dollars, issued under and in pursuance of an order of the County Commissioners of the county of Dakota, in the State of Nebraska, and authorized by an election held in the said county on the 17th day of December, A. D. 1875, and under and by virtue of Chapter 25, of the General Statutes of Nebraska, and amendments thereto, and the constitution of the said State. Article 12, adopted October, A. D. 1875.

In Testimony Whereof, the County Commissioners have caused these presents to be signed by the Chairman of the Board and attested by the Clerk of said county, and affixed the seal of the said county at Dakota City, the county seat, this first day of January, A. D. 1876.

(Signed) J. W. Davis,
Chairman of the Board of County Commissioners of Dakota County, Nebraska.

Attest:

(Signed) W. C. McBeath,
County Clerk Dakota County, Neb.

SIX PER CENT. BOND OF AUG. 14, 1882.

UNITED STATES OF AMERICA,
COUNTY OF DAKOTA, STATE OF NEBRASKA.

No. 1. $1,000.

KNOW ALL MEN BY THESE PRESENTS: That the county of Dakota, in the State of Nebraska, acknowledges itself indebted to William Tare, and hereby promises to pay William Tare, or bearer, the sum of one thousand dollars, at the Farmers' Loan and Trust Company, in the city of New York, on the first day of July, 1902, or at the option of said county at any time after the first day of July, 1892, together with interest thereon from the first day of July, 1882, until paid, at the rate of six per cent. per annum, which interest shall be payable semi-annually on the first days of January and July of each year, upon the presentation and delivery at said Farmers' Loan and Trust Company, in the city of New York, of the interest coupons hereto severally attached. This bond is one of a series of bonds issued under and by authority of, and in pursuance of the order of the County Commissioners of the county of Dakota, in the State of Nebraska, and to take up and refund bonds issued by said county of Dakota, on the first day of January, 1876, to aid the Covington, Columbus and Black Hills Railroad Company in a work of internal improvement in said county, which bonds bear interest at ten per cent. per annum, and which bonds and interest coupons taken therefrom are still unpaid and a just debt and legal liability against said

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county. And said bonds are issued under, by authority and in pursuance of an act of the legislature of the State of Nebraska, (Laws of 1877, page 224,) entitled "An act to authorize the issue of county bonds in certain cases," approved February 19th, 1877, which act is as follows, to-wit:

AN ACT TO AUTHORIZE THE ISSUE OF COUNTY BONDS IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Nebraska:

SECTION I. That any county, city, or precinct in the State of Nebraska, which has heretofore voted and issued bonds to aid in the construction of any railroad or other work of internal improvement, and which bonds or any part thereof still remain unpaid, and remain and are a legal liability against such county and bearing interest at ten per cent. per annum, is hereby authorized to issue coupon bonds at a rate of interest not exceeding eight per cent. per annum, to be substituted in place of, and exchange for such bonds heretofore issued, whenever such county, precinct or city can effect such substitution or exchange, which substitution and exchange shall be dollar for dollar.

SEC. 2. The new bonds so issued shall have recited thereon the object of its issue the whole of the act under which the issue is made, stating the issue to be pursuant thereof, and shall also state the number, date and amount of

the bond, or bonds, for which it is substituted, and such new bond shall not be delivered until the surrender of the bond, or bonds, so designated.

SEC. 3. The new bonds so issued shall not require a vote of the people to authorize such issue, and they shall be paid and the levy made and the tax collected for their payment in accordance with the laws now governing the said bonds heretofore issued. (Approved February 19, 1877.)

This bond is issued in pursuance of said act, and is issued in substitution of, and in exchange for, bond No. 1, of $1,000, of said former issue, which said bond was surrendered on the delivery of this bond.

IN TESTIMONY WHEREOF, the County Commissioners of said county of Dakota, have caused these presents to be signed by the Chairman of the said Board and attested by the County Clerk of said county, with the seal of said county affixed, at Dakota City, the county seat of said county, on the 14th day of August, 1882.

Attest: HENRY SCOTT,
[SEAL] County Clerk of Dakota Co. Neb.

HENRY REAM,
Chairman of the Board of County Commissioners of Dakota County, Nebraska.

I.

Our first proposition is that the bond of January 1, 1876, was absolutely void, even in the

hands of a *bona fide* holder for value, and that upon its settled decisions the Court must so find when this case is reached for argument.

In the record of this case will be found a stipulation of facts, signed by Mr. J. M. Woolworth, Glidden's attorney, found on page 13 of Record, and here given in full.

IN THE UNITED STATES CIRCUIT COURT, DISTRICT OF NEBRASKA.

HENRY H. GLIDDEN
vs.
THE COUNTY OF DAKOTA.

The plaintiff admits upon the record of this case the following facts:

1. The assessed valuation of taxable property in said county by the proper officers thereof for making the same in the year 1875, was $637,655, and no more, and the amount of bonds, of which the bonds from which the coupons in suit were detached, were a part, exceeded 10 per cent. of that sum, and that the $10,000 already voted for building a court house exceeded 15 per cent. of such valuation.

2. The railroad was not built by way of Homer and Fidler's Creek, but was built south from Covington to Dacotah, five miles from Dacotah west to the junction, five miles thence northwest to Jackson, about four miles thence to the north line of the county, and to Ponca nine miles. From the said junction west is three miles to the bluffs where Pigeon Creek flows. The road was graded from the junction to, and

through the bluffs up Pigeon, to the west line of the county, eighteen miles; nothing else was done on the Columbus branch. The grades on the route by Homer and Fidler's Creek are easier than by Pigeon Creek, and reasonably practicable, but the distance is seven miles greater.

3. The standard gauge of railroads is four feet eight and a half inches, narrow gauge roads are generally three feet, but they are sometimes three feet six inches and sometimes other gauges.

4. The road was not of good quality in respect of grade, ties and material. The iron was light weight.

5. The Omaha and Northwestern and the Elkhorn Valley Railroads were at the time of issuing said bonds constructed northwardly in the direction of the line of road proposed to be built by said Covington, Columbus and Black Hills Railroad. They had corporate authority to extend north, but were not being so extended. They were standard gauge and there were no narrow gauge railroads in this State or with which the proposed road could connect.

6. After the proposition to issue said bonds had been published and before the election thereon, I. B. Hubbell, General Manager of said railroad, stated publicly to the Commissioners of the county and other citizens, that his Company had never intended to build any but a standard gauge road, which influenced the voters in favor of voting for the proposition.

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The ties for the first part of the road were gotten out and distributed, being eight feet long, the usual length for a standard gauge road, before the delivery of the bonds to the Trustee.

The above admissions are made for the purpose of saving time in the trial of this cause, and are made subject to all objections to the matter thereof on the ground that they are immaterial and irrelevant and that by the records of the County Commissioners the defendant is estopped to allege the same. The plaintiff now insisting the proof in support of the matter of the said admissions, is incompetent, and the said matters, and each and every one thereof, save the first, ought not, for the reasons aforesaid, to be submitted to the jury.

J. M. WOOLWORTH,
Plaintiff's Attorney.

The first clause of the stipulation is fatal to this case.

The bonds in question were issued and dated January 1, 1876. At that time the constitution of Nebraska contained the following provision:

"No city, county, town, precinct, municipality, or other sub-division of the state, shall ever make donations to any railroad or other works of internal improvement, unless a proposition so to do shall have been first submitted to the qualified electors thereof, at an election by authority of law: *Provided*, That such donations of a county, with the donations of such sub-divisions, in the aggregate, shall not ex-

ceed 10 per cent. of the assessed valuation of such county. *Provided further*, That any city or county may, by a two-thirds vote, increase such indebtedness 5 per cent. in addition to such 10 per cent., and no bonds or evidences of indebtedness so issued shall be valid unless the same shall have indorsed thereon a certificate signed by the Secretary and Auditor of the State, showing that the same is issued pursuant to law."

They must, therefore, stand or fall upon the assessed valuation of the taxable property of the county of Dakota for the year 1875. The assessed valuation for that year was $637,655, as shown by special verdict. This would sustain an issue of only $63,765 in bonds, to-wit: 10 per cent. of the taxable valuation of the county for the previous year. Being in excess of that amount they are absolutely void.

This is not an open question. The bonds under consideration are similar in every respect to those of Dixon county passed upon by this Court in Dixon county vs. Field III U. S. P. 83. The recitals of the Dakota county bond are identical with those of Dixon county as will appear by a comparison.

RECITAL OF DAKOTA COUNTY BOND.

This bond is one of a series of ninety-five thousand dollars, issued under and in pursuance of an order of the County Commissioners of the County of Dakota, in the State of Nebraska, and authorized by an election held in the said

County on the 17th day of December, A. D. 1875, and under and by virtue of Chapter 25, of the General Statutes of Nebraska, and amendments thereto, and the constitution of the said State. Article 12, adopted October A. D. 1875.

RECITAL OF DIXON COUNTY BOND.

"This bond is one of a series of eighty-seven thousand dollars issued under, and in pursuance of an order of the County Commissioners of the county of Dixon, in the State of Nebraska, and authorized by an election held in the said county on the twenty-seventh day of December, A. D. 1875, and under and by virtue of Chapter 35, of the General Statutes of Nebraska, and amendments thereto, and the constitution of the said State, Article XII, adopted October, A. D. 1875."

In that case it was held that the recital did not release a purchaser before maturity for value from the obligation of inquiry as to the assessed valuation of the taxable property of the county, and that the bonds having been issued in excess of the limit allowed by the constitution of the state, are absolutely void even in the hands of a person who, except for this, would be a *bona fide* holder for value. Notwithstanding the judgment below, therefore, there can be no question that the bonds under consideration were and are absolutely void.

II.

The bonds of July 1, 1882, issued and exchanged for those of January 1, 1876, were issued without any authority whatever, and the alleged compromise was void for lack of power in the Board of County Commissioners to make it.

The first point to be noted is that the proceedings of the Board authorizing the issue of these bonds were taken and the bonds themselves were issued under a law of Nebraska, passed and approved February 19, 1877, (Laws of Nebraska, Page 224), a full copy of which is here given:

"AN ACT TO AUTHORIZE THE ISSUE OF COUNTY BONDS IN CERTAIN CASES.

"*Be it enacted by the Legislature of the State of "Nebraska:*

"SECTION 1. That any county, precinct or city in the State of Nebraska which has heretofore voted and issued bonds to aid in the construction of any railroad, or other work of internal improvement, and which bonds, or any part thereof, still remain unpaid, and bearing interest at 10 per centum per annum, is hereby authorized to issue coupon bonds at a rate of interest not exceeding 8 per centum per annum, to be substituted in place of, and exchanged for such bonds heretofore issued, whenever such county, precinct or city can effect such substitution and exchange, which substitution and exchange shall be dollar for dollar.

"SEC. 2. The new bond so issued shall have recited therein the object of its issue, the whole of the act under which the issue is made, stating the issue to be in pursuance thereof, and shall also state the number, date and amount of the bond or bonds for which it is substituted, and such new bond shall not be delivered until the surrender of the bond, or bonds, so designated.

"SEC. 3. The new bonds so issued shall not require a vote of the people to authorize such issue, and they shall be paid, and the levy be made and tax collected for their payment, in accordance with laws now governing the said bonds heretofore issued.

Approved February 19th, A. D. 1877."

In respect to this there can be no possible doubt. The bond itself contains the recital heretofore set out, which is also followed by a copy of the law under which they are issued to-wit: the law of 1877, just set out, incorporated therein.

The statement contained in defendant's brief that these bonds were issued in whole or in part under the act of February 28, 1883, (Laws of 1883, P. 194,) is untrue in fact. They bear date August 14, 1882, and all the procedure leading up to them antedates that time. The act of 1883 has no bearing whatever upon the validity of the issue of these bonds, and all statements to that effect are in flat conflict with the express declarations and recitals of the bonds themselves. There is no reference whatever in them

to the act of 1883, and they were authorized and issued before the passage of that act. Their legality, therefore, must be tested wholly by the act of 1882, set out in the bond.

Under that act the Board of County Commissioners had no power whatever to issue the bonds of 1882, or to exchange them for the previous bond of 1876. It is unnecessary to cite authorities upon the principle that a county has no powers except those derived from express grant—that the County Board could do nothing in the premises except by express authority of the statute. The power, therefore, does not exist unless it is found in the statutes of 1877. That statute authorizes any county, which has theretofore issued bonds in aid of works of internal improvement, to issue coupon bonds at a lower rate of interest, to be substituted or exchanged for the original bonds remaining unpaid, but only such of these as "remain and are a legal liability against such county." This power also, by the terms of the act, may be exercised without a vote of the people. The original bonds could only be issued upon a vote of the people, and required a majority of two-thirds of all the votes cast. This restriction was taken away, and any one at all familiar with the average history of such legislation will readily understand why and at whose instance this safe-guard was removed. But the legislature seems to have been unwilling to remove all barriers to loading the county of Dakota with a debt it did not lawfully or

honestly owe, and so incorporated into the law a condition precedent that only such bonds could be refunded as "remained and were a legal liability against the county." At that time these bonds of 1876 had been issued, and their validity was in dispute, and the county was refusing to pay interest upon them, and the coupons owned by Glidden were afterwards put in suit. The bonds of 1876 therefore, being, as has since in effect been declared by this Court, absolutely void for lack of power in the county to issue—they resting in that respect under an express inhibition of the constitution of the State—and being at that time repudiated by the county for that reason—were not within the scope of the act in question, but were in plain and express words excluded from its provisions.

It contained no authority to pay the old bonds which were a nullity, and no power to issue new ones which are also a nullity. When the bonds of 1876 were issued the constitution was violated, when those of 1882 were issued a plain statute constituting the only warrant of action was set at naught. Can this double violation of law and constitution result in a valid obligation against the county? If so, the old notion that two wrongs cannot make one right must give way to the modern dogma, that what the constitution of a State declares void, may be rendered valid by the violation of a statute subordinate to the same constitution.

But it is said that when these bonds were

delivered to Glidden, another statute, that of February 23, 1883, was in force, and that it is sufficient to uphold these bonds. The answer is, that the bonds were not issued and do not purport to be issued under that act; that every step required by law to be taken, and actually taken, by the Board to authorize the issue of said bonds, were taken six months before the passage of that act and that the bonds were actually executed, dated and issued six months before that date. Every power vested in the Board by the law under which they acted had been exercised and exhausted six months before the passage of the law of 1883, under which it is sought to vindicate this issue of bonds.

But it is claimed that this Court is barred upon the question of the validity of the Board of 1882 by the judgment of the Supreme Court of Nebraska, authorizing the registry and certification of the same by the Auditor and Secretary.

The answer to this is, that the question involved is one of commercial law, involving the validity of negotiable instruments upon which this Court is not bound by the decisions of the State Court, and that in the case of Field vs. Dixon county III U. S. 76, this Court expressly held that such registry and certification of the bonds by the Secretary and Auditor were not conclusive or even *prima facie* evidence of the validity thereof.

Township of Pine Grove vs. Talcott, 19 Wall,

666; Olcott vs. Supervisors, 16 Wall, 678; Foote vs. Johnson county, 5 Dillon, 281; Gelpcke vs. Dubuque, 1 Wall, 175; Butz vs. Muscatine, 8 Wall, 575.

It is further contended that this so-called compromise, without regard to the validity of the bonds of 1876 or 1882, may be upheld upon the power of the county to sue and be sued and to make contracts. When it is remembered that the bonds of 1876 were donated to aid the construction of a railroad, that such a bond can only be made by a two-thirds vote of the electors of the county, and that the exercise of this power is surrounded by many special restrictions of law and constitution, and that power to issue the exchange bonds is only derived from a special law of Nebraska and not from the general law defining the powers of counties, this seems an extraordinary claim. To make a void debt valid it would only be necessary to have suit brought and adequately manipulate a dishonest or subservient Board. I cannot believe this Court will accept and sanction this doctrine. The sound view undoubtedly is, that aside from the law of 1877, there was no power in the Board of Commissioners to deal with the Board of 1876, except to raise money by taxation, to pay the interest as it fell due, and the principal at maturity in 1896. No suit had been brought on the bonds themselves. Only a small amount of coupons had been put in suit. Yet in a suit upon this small lot of coupons the Commissioners, by way of compro-

mise of that suit, as is claimed, undertook to take up the entire illegal issue of $95,000 bonds of 1876, principal and interest, and substitute therefor another set of bonds. All this under a power to compromise a pending suit, when no suit had been brought to recover upon a single bond. The whole transaction shows that the Commissioners did not assume to have or exercise any powers not derived from the act of 1877. They expressly recited in the new bond that it is made and exchanged under that act, and there is no reference whatever to any other source or supposed source of power. To claim that this so-called compromise is based on, and was exercised under warrant of any general power granted counties, is to ignore every fact and law governing the transactions here in controversy.

III.

The question of the validity of this so-called compromise cannot legitimately be raised. It does not in any manner appear in the record, and ought not to be considered in this Court.

The record of the case brought here upon error shows no compromise, discharge or satisfaction in any form or upon any inference. If the fact of the making of the so-called compromise exists, it only appears from ex-parte affidavits, which seem to be leveled at the record. The county is not a party to these affidavits or to the cause they are de-

signed to bolster up. Whatever may have been the action of Commissioners in office at the time of this alleged adjustment, the present Board repudiates it, and seeks to protect Dakota county taxpayers from the spoliation which will result from its enforcement. These transactions have passed in review before the people of the county, and the result is a Board intent upon avoiding both sets of bonds for which the county has received no consideration and which are wholly unsupported by constitutional or statutory authority. They should be presumed to know the purposes of the county and be at least as familiar with its obligations and contracts as Glidden. When the validity of that compromise comes in question it should be in a court where specific issues, on both sides, may be met and settled, with the aid of process to compel the attendance of witnesses and all the appliances for ascertaining the facts. The only question involved here is the validity of the bond of 1876. We submit, the county is entitled to have it heard and determined unaffected by this motion.

Counsel say, suppose this case goes to argument and judgment, and the county is successful, what good will it do either of the parties?

It will do this good, viz: There will be a judgment for costs against Glidden; the entire issue of $95,000 of bonds of 1876 will practically be declared void by this Court, and the only question of interest left will be whether, under the act of 1877, a valid issue of bonds can be made to take up a mass of bonds, adjudicated void

without aid of legislation. We think the vision of that issue in the distance has produced the elaborate brief, which seeks to dispose of the case by a flank assault. We commend to the defendant the language of the Court in Board of Liquidation vs. Louisville Railroad Company, and are content to rest upon it, that the case "presents questions too important to be settled summarily on motion."

IV.

It is also contended that this so-called compromise should be enforced on this motion, because the county made it deliberately and Counsel assented to and advised it. On this subject perhaps the less said the better, as such a statement has no warrant in the record and no relevancy to the question here. If it acted absolutely without power, no amount of deliberation and no gravity of Counsel could impart validity to the result. But there is room for doubt as to these assertions of deliberation. Counsel themselves say,that while Dixon county upon the advise of its Counsel was on the way to this Court with what seemed to them a very hopeful and righteous case, the authorities of Dakota county were seeking to prevent like action by loading its tax-payers with an unauthorized and utterly illegal exaction amounting, principal and interest, to nearly a quarter of a million dollars. The circumstances, surroundings and motives and actions, accompanying

this extraordinary proceeding—taken side by side with a resolute resistance by an adjoining county—cannot be investigated in this Court, and this constitutes a strong reason for relegating the question of the validity of the alleged compromise to an appropriate tribunal.

It is respectfully submitted that this motion should not prevail, but that the case should go to final argument upon the questions presented upon the record brought up by the writ of error.

A. J. POPPLETON,
J. M. THURSTON,
Attorneys for Plaintiff in Error.

113-222

Office Supreme Court U. S.
FILED.
JAN 5 1885
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IN THE

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THE COUNTY OF DAKOTA,
Plaintiff in Error.

vs.

HENRY H. GLIDDEN,
Defendant in Error.

ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF NEBRASKA.—MOTION TO DISMISS WRIT.

BRIEF IN SUPPORT OF MOTION BY R. P. RANNEY.

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Without repeating the history of this case in the Circuit Court, and the facts connected with the satisfaction of the judgment therein rendered, which are fully set forth in the Brief already filed—it certainly cannot be doubted, that in form at least, that judgment has been fully satisfied and discharged, in accordance with an agreement between the parties which has been fully performed; nor that, if that agreement and satisfaction are legally operative, this writ ought to be dismissed. There is no subsisting judgment to review; and a party cannot be heard to complain of errors which he has voluntarily condoned, and which have no effect upon his present rights. If any remedy remains, it is one wholly different from anything afforded by the Writ of Error.

I have seen no statement of the grounds upon which it is supposed that this writ may be sustained, and the judgment as originally rendered in the Circuit Court may be reversed; but undoubtedly the whole must rest upon the assumption, that the bonds originally issued by this county, upon some of the interest coupons of which the judgment was rendered, and which were delivered up and destroyed when the new bonds which satisfied the judgment were issued, *were illegal and void*; and that being so, they constituted no consideration upon which to rest the new bonds; and the very plain object of this proceeding is to remove any obstacle arising from the judgment of the Circuit Court, and thus lay the foundation for resisting the payment of the new bonds. And it is equally plain, that whatever of hope or expectation there may be of accomplishing these results, is founded upon the decision of this Court in the case of *Dixon County vs. Field*, 111 U. S. R. 83. Without questioning the correctness of that decision, or criticising the compact logic of the eminent jurist who delivered the opinion, candor, we think, must compel the admission that the strict doctrines and presumptions upon which it is founded, will not admit of any wider application than the facts of that case presented; and that they cannot be extended to the questions now arising upon the validity of the compromise bonds, without seriously intrenching upon principles very firmly established by a long line of previous decisions made in this Court.

In view of the very thorough and satisfactory abstract and brief already filed in support of this motion, it is unnecessary to do more than briefly state the reasons which bring us to the conclusion above stated, and nothing further will be attempted.

I

It is to be constantly borne in mind, that all the questions resolved in the Dixon County case, arose upon

the bonds originally issued by that County—no compromise or substitution of bonds ever having been made; and that, in passing upon the validity of the compromise bonds, the facts and circumstances existing at the time the original bonds were delivered up and destroyed, and these were issued and put in circulation, are alone to be regarded.

What were these additional facts and circumstances, and what is their legal significance upon the question *now* arising as to the validity of the compromise bonds?

The original bonds were issued in 1876: and soon thereafter were sold by the railroad company to various persons and institutions. After the payment of two or three installments of interest, the county refused to make further payments; and thereupon, the defendant in error, being the holder of a number of the bonds, instituted a suit in the Circuit Court of the United States, upon coupons for interest then due and unpaid, which being stubbornly litigated, resulted in a verdict and judgment for the plaintiff; establishing the *bona fides* of his holding, and his right to enforce the payment of the bonds and coupons.

At about this time, and under these circumstances, the county authorities, impressed apparently with the hopelessness of their defense, and perhaps with the desire to save the county from the disgrace of repudiation, began to devise plans for a compromise and settlement with the holders of its bonds, by the substitution of new bonds for the old, upon terms less onerous to the county. To accomplish this purpose, and induce these holders to give up bonds bearing ten per cent interest, (a large part of which was already due and payable,) and which had so far been adjudged perfectly valid, and take for them bonds bearing but six per cent interest, with a long extension of time for their payment, *they must have known*, as a dictate of ordinary common sense, that they could meet with no success, without inducing the holders to believe that the new bonds were perfectly valid and secure.

To this end, and for the purpose of placing their own authority to carry the plan into execution, beyond all dispute, they applied for and obtained the legislative act of 1877 (Brief p. 10); by the first section of which full authority was given to make the exchange and substitution of bonds, at a rate of interest not exceeding eight per cent; and by the third section, any vote of the people authorizing the issue of the new bonds was dispensed with, and they were to "be paid and the levy be made and the tax collected for their payment in accordance with the laws now governing said bonds heretofore issued."

Being now in a condition to exercise the authority thus given, the county commissioners, after a series of meetings, extending from June 19th to August 14th, 1882, at this last date authorized the execution by the proper officer and under the seal of the county, of an amount of new bonds equal to the amount of the old bonds and unpaid interest, to run for twenty years from July 1, 1882, at six per cent interest; both principal and interest to be paid at the Farmers Loan and Trust Company in the city of New York—(Abstract and Brief, p. 66).

This action of the commissioners was taken in accordance with a proposition from the bondholders, accepted by them on the 5th day of July preceding (Abstract and Brief p. 64), and recites that the former bonds still remained a just debt and legal liability against the county, whose best interest was promoted by taking them up with a new issue of six per cent bonds.

The bonds being properly executed and certified by the county authorities, as above provided, were presented to the Auditor of State for registration, and to him and to the Secretary of State to be certified that they had been regularly and legally issued in accordance with the laws of the State of Nebraska.

These officers declining the performance of these duties, for the old reason, tried out in the Circuit Court, that there was an over-issue, and for the additional one, that this issue had not been authorized by a vote of the electors,—the county, upon its own relation, prosecuted a proceeding in mandamus, in the Supreme Court of the State, to compel them to do so. A complete history of this proceeding is found in Mr. Woolworth's brief and abstract, page 51; and in the reported case, 14 Neb. R., 280.

It must suffice here to say, that with these objections distinctly presented in the return made to the writ by these officers, and a full hearing as stated in the affidavits, the Court awarded a peremptory mandamus, and ordered the auditor "forthwith to register the bonds" as required by law in his office, and to certify upon them the fact that they were so registered, and "that they have been regularly and legally issued," and that both officers endorse upon them a certificate, "showing that the same are issued pursuant to law." This peremptory writ was awarded on the 10th of Feb., 1883, and was immediately obeyed.

But still the old bonds were not delivered up and the new ones taken, until another step, whether necessary or not, deemed advisable for the perfect satisfaction of the bondholders, was taken. The county appealed to the legislature of the state for an act more specifically defining its powers and duties, in respect to the refunding of its bonded indebtedness. This appeal resulted in the passage of the general law of Feb. 28, 1883—Nebraska Laws of 1883, p. 194. By the first section of this act, any county having a bonded indebtedness might refund it, by the issue of new coupon bonds, equal in amount to the principal and interest due upon the old bonds, payable not exceeding twenty years from their date, at a rate of interest not exceeding *six per cent;* "to be substituted in the place of and exchanged for bonds heretofore issued,"

whenever such substitution and exchange could be effected with the holders of the prior bonds.

The *second* section reads as follows:

"Sec. 2. The provisions of the foregoing section and of this act shall apply to and include all bonds heretofore issued by any county which have been held and determined to be valid and binding in the hands of *bona fide* holders thereof, in any action or actions thereon, or on any coupon thereof, by any state or federal court of competent jurisdiction within this state, and such bonds with the interest thereon constitute a bonded indebtedness within the meaning of this act."

By the fifth section, the Auditor of State is required to register such substituted bonds, and the Auditor and Secretary to certify them; "and a tax to pay the interest and principal thereof shall be levied in the same manner as is now provided by law or the constitution in the case of other county bonds."

The eighth section provides, that any county may thus refund its bonded indebtedness, "irrespective of the fact that said indebtedness exceeds ten per cent of the present valuation of the property of said county;" and that the refunding bonds might be issued by the commissioners of the county, "without submitting the proposition therefor to a vote of the electors."

From this time forward matters seem to have progressed without friction and satisfactorily to the authorities of the county. In June following, Glidden was settled with, and his judgment receipted in full; and before the 6th of December, all the old bonds had "been taken up and redeemed by the county by issuing and delivering refunding bonds in lieu thereof;" and on that day the redeemed bonds were solemnly committed to the flames in the presence of witnesses, and went up "where the woodbine twineth," with no thought on the part of any one connected with the transactions that they would ever be brought in question again. The obligations of the county

upon the compromise bonds, so far as we know, were fully performed, and the interest coupons paid, until information of the decision in *Dixon County* vs. *Field* was received; when erroneously assuming that the compromise bonds stood upon the same footing as the original, involved in that case, the commissioners promptly met, and cupidity triumphing over both moral and legal obligation, directed the treasurer to refuse payment of all coupons attached to that issue of bonds, "for the reason that said bonds are illegal and void."

II.

From the foregoing summary of facts, preceding and connected with the issue of this series of compromise bonds, and their acceptance by the then holders in full settlement and satisfaction of the prior bonds, and of the judgment obtained by the defendant in error upon interest coupons of those bonds,—none of which were presented or considered in the Dixon County case—we insist there results the following legal positions, either of which being well taken, must avail to dismiss this writ of error.

FIRST.

It is strangely anomalous that a debtor, who has voluntarily satisfied a judgment, should be prosecuting a writ of error to reverse it for no other or better reason than that what he gave in satisfaction was worthless—the creditor making no effort to interfere with the satisfaction, or in any form to enforce the judgment, but remaining still perfectly satisfied with what he obtained.

But, while this proceeding would seem to be without object and wholly unnecessary to protect any right the county may have; still, from the standpoint of the plaintiff in error, there is method in the madness;—the plain purpose being, in this indirect manner, to obtain an adjudication that the compromise bonds are void, which will serve as a precedent to annul the whole issue,

whether held by parties to this proceeding or not, and then reverse this judgment upon the authority of the Dixon County case; thus relieving the county from all responsibility for the money it has obtained.

We feel confident that this scheme involves too much of irregularity and injustice to be carried into effect.

SECOND.

But if the Court should find it necessary to enter upon an examination of the validity of these bonds, we then insist that the county is conclusively estopped from alleging the invalidity of the prior bonds, as a reason for annuling the compromise bonds, or for interfering with the compromise, settlement and satisfaction of the judgment sought to be reviewed.

Whether we regard the principle upon which this most just and necessary doctrine of the law is founded, or the numerous cases decided by this Court, in which it has been enforced, we cannot well conceive a stronger case for its application than the present case, upon its admitted facts, affords.

There has been no intimation worth a moment's attention, that anything more serious affects the legality of these bonds than that they were issued and accepted in satisfaction of a prior issue, slightly larger than was authorized by the Constitution and laws of the State—not larger than the county might have burdened itself with, upon the votes actually given, if the legislative act had been sufficiently comprehensive, but larger than that act allowed to be submitted to a vote—and that the judgment rendered by the Circuit Court was founded upon coupons for interest attached to some of these prior bonds.

In assigning to this doctrine of estoppel its proper limits, and correct application, considerations of public policy often unite with those of individual justice, in arriving at sound conclusions; and in this matter, they are of commanding importance.

The instruments put in circulation by this county were negotiable commercial paper, designed to pass from hand to hand by delivery, which attribute constituted a large part of their commercial value, and belonged to a class of instruments in respect to which this Court has repeatedly declared, that nothing short of circumstances amounting to a fraud could avail to impeach the title of a holder for value. The whole doctrine of reasonable care in taking it, and constructive notice, advanced in some of the early cases, has entirely passed away.

Again, it is perfectly fair to assume that the authorities of the county issuing these bonds did not suppose they would be taken and put in circulation in the new State where they were issued, where there was no surplus capital and interest was high; but would go to the distant commercial centres of the East, where capital was seeking investment, but where faith had to be reposed in representations rather than in any accurate knowledge of the laws and institutions of the distant State.

A third general consideration, if not utterly decisive of this whole controversy, (as I think it is), is certainly entitled to great weight. I do not remember a case in which such a defense to the enforcement of municipal bonds has been interposed, that did not assume that the bonds had been issued without authority of the State, or in violation of its laws or declared policy; nor do I believe that a case can be found, where this Court has ever intervened to shield from responsibility a municipal division of a State, whose obligations had been incurred by the authority and approval of the competent State authorities. Upon this subject nothing could be clearer, or more decisive, than the facts presented in the present case, relating to the issue of the compromise bonds.

The county authorities did no act, took no step, that was not fully authorized and approved by the State authorities and by every branch of the State government,

—by the Legislature in the passage of the laws, empowering the county to compromise and fund its prior indebtedness, and to use for that purpose the bonds in question; by the Executive in approving those laws; and, finally, by the Supreme Court of the State in adjudging the bonds, proposed to be issued and used, to be legal and valid, and ordering the State officers to certify their conformity to the laws of the State.

With no provision of the Constitution or laws of the United States pretended to be invaded, it certainly would present this Court in a new role, that it should find itself obliged to disregard the construction placed upon the Constitution and laws of a State, by every department of the State government, and to ignore all its efforts to enable a municipal division of the State to compromise its liabilities and save itself from the disgrace of repudiation; and this, not to protect the rights or interests claimed by the citizens of other States, but in flat opposition to both; and involving so sweeping a nullification of everything done by the State, and its local subdivision, as not alone to prevent its compulsory execution, while the plan of compromise remained executory, but so complete as to take from the holders of the prior bonds for value, and in actual good faith, and even from one whose claims had been reduced to judgment, the right to rely upon these proceedings of the State and county, as a stable foundation upon which to accede to the compromise, by giving up his original rights and obligations, satisfying his judgment, and taking for them the compromise bonds now in question. It is enough to state the proposition, to enable me to express the confident belief, that this high tribunal will not find it in the line of its duty to aid this scheme of repudiation, nor within the scope of its rightful powers, to thus revise the action of the State tribunals in matters of purely local and domestic concern. If an authority is needed as to the conclusive character of such proceedings, it is found in *Sherman County* vs. *Simmons*, 109 U. S. R., 737.

But to return for a few minutes to the overissue of the original bonds, and any rightful effect that fact can have upon the validity of the compromise bonds.

It never has been held in this Court, that the simple fact that there was an overissue, would affect the validity of the bonds in the hands of a *bona fide* holder; but the contrary has been repeatedly decided, As the cases upon this subject are numerous, and perfectly known to the Court, I shall refer to such only as more immediately confirm or illustrate the positions I take. Indeed, the whole subject has been recently so thoroughly reviewed by several of the Justices of this Court, as to make extended references not only unnecessary, but decidedly out of place.

In *Town of Coloma* vs. *Eaves*, 92 U. S. R. 484, where the objection to the bonds was, that the legal voters of the town had not been notified to vote upon the question of subscription, the Court held that a recital in the bonds that they were issued in accordance with a vote of the electors at a regular election, and of certain statutes giving the authority to subscribe and issue bonds in payment, and in accordance with those laws, to be "conclusive of the fact, and binding on the municipality; for the recital is itself a decision of the fact by the appointed tribunal." Justice STRONG in delivering the opinion, upon a review of all the previous decisions, and upon the fact that they were intended to be put upon distant markets for sale, where the purchaser could know little of the extrinsic facts necessary to be observed, or limitations upon the exercise of the powers conferred, while the officers empowered to issue the bonds must be perfectly advised of all the facts—arrived at the conclusion that their recitals were in fact decisions, "beyond which a *bona fide* purchaser is not bound to look for evidence of the existence of things *in pais*."

The case of *Marcy* vs. *Township of Oswego*, 92 U. S. R. 637, is perhaps more directly in point to show the rights and standing of bondholders, as the only objection made to the bonds in that case, like that made to the original bonds here, was founded upon the fact that there had been an overissue. The same learned Justice who delivered the opinion in the preceding case, states the question to be, whether "it could be shown, as a defense to a recovery, that at the time of voting and issuing the series of bonds, the value of the taxable property of the township was not in amount sufficient to authorize the voting and issuing of the whole series, amounting to $100,000."

The bonds recited that they were "issued by virtue of and in accordance with an act of the Legislature of the said State of Kansas," giving its title and date, and "in pursuance of and in accordance with the vote of three-fifths of the legal voters of said Township of Oswego, at a special election duly held on the seventeenth day of May, A. D. 1870."

The legislative act contained the restriction, that "the amount of bonds voted by any township should not be above such a sum as would require a levy of more than one per cent. per annum on the taxable property of such township to pay the yearly interest."

In the event of an affirmative vote, the county commissioners might order the clerk to make the subsription in the name of the township, "and should cause such bonds as might be required by the terms of the vote and subscription to be issued in the name of such township, to be signed by the chairman of the board and attested by the clerk, and under the seal of the county."

The act contained no intimation whatever, that the commissioners were to act as a board to decide any questions arising under the act, further than was to be implied from the performance of the duties required of them, to be exercised upon a prescribed state of facts.

And yet, the Court responded to the question above stated as follows: "It is to be observed that every prerequisite fact to the execution and issue of the bonds was of a nature that required examination and decision. The existence of sufficient taxable property to warrant the amount of the subscription and issue, was no more essential to the exercise of the authority conferred upon the board of county commissioners than was the petition for the election, or the fact that fifty freeholders had signed, or that three-fifths of the legal voters had voted for the subscription. These are all extrinsic facts, bearing not so much upon the authority vested in the board to issue the bonds, as upon the question whether that authority should be exercised. They are all by the statute, referred to the inquiry and determination of the board, and they were all determined before the bonds and coupons came into the hands of the plaintiff. *He was, therefore, not bound when he purchased to look beyond the act of the Legislature and the recitals which the bonds contained*"

I do not find that these cases have ever been questioned in any subsequent case, but have been again and again referred to with approval, and notably in the exhaustive opinion of Mr. Justice HARLAN in *Buchanan* vs. *Litchfield*, 102 U. S. R. 290.

In no State of the Union have the interests of the municipal bodies been more carefully guarded against error or fraud, in the issue of this description of paper, and those of purchasers more thoroughly assured, than in the State of Nebraska. For, in addition to all that can be done in the counties, the entire proceedings must pass the ordeal of two high State officers, before the paper could be used or put in circulation; and in the faithful discharge of their duties, they must, upon full examination, be able to certify that it has been regularly and legally issued in conformity to the laws of that State. If this is not a

decision upon all the law and facts which make up legality, regularity and conformity to law, I should not know what to call it; and I should therefore have supposed that, in accordance with the decisions I have referred to, a general reference to the laws giving the authority, by way of recital, and the superadded direct certificate of the State officers, might be relied upon by a purchaser as foreclosing all dispute as to *extrinsic facts*, which necessarily precede the issuing of the bonds. Indeed, I would have thought, that a main purpose of requiring the certificate of these state officers, was to inspire that sort of implicit confidence in distant purchasers, that their investment would be secure, which would necessarily enhance the value of the bonds, and in the same degree promote the objects for which they were issued.

But it would seem from the conclusions reached in the late *Dixon County Case*, that the opinions I would otherwise have formed, would, to some extent at least, have been erroneous; since it was there held, that there was nothing in the proceedings or certificates of the State or county authorities or in the recitals of the bonds, which estopped the county from insisting upon the overissue as a reason for refusing payment of them.

It is a noticable fact, however, that none of the previous decisions are in the least questioned or qualified; and the conclusion seems to be founded upon the legal principle, that in so far as they cover matters of law, every one is bound to know it; and in respect to matters of fact, while it is conceded that "a general statement that the bonds have been issued in conformity with the law will suffice, so as to embrace every fact which the officers making the statement are authorised to determine and certify"—yet, it is held, that none of the officers connected with the issue of these bonds, were invested with authority to ascertain and determine these facts, and neither the Constitution nor the Statute had given any

conclusive effect to their recitals or certificates. The case turned upon the proper construction to be given to the Constitutional provision, and the statutes authorising the the issuing of the bonds; but, as in the previous cases, which are cited and approved, where it does appear, or is fairly to be inferred, that any of the officers charged with the duty of issuing the bonds, or any other persons or tribunal, have been authorised to ascertain and determine the preliminary facts upon which their rightful issue depends, and it appears from recitals or certificates that the duty has been performed, it is expressly declared, that such action is final and conclusive in favor of a *bona fide* holder, and such facts are no longer open to doubt or question.

I have thus gone through, at greater length than was needed, with the circumstances attending the original issue of bonds by this county, for the single purpose of showing the legal *status* of the county and the holders of its bonds, at the time efforts were commenced to effect a compromise and settlement of all differences between them; as I regard questions arising upon those bonds, as having little or nothing to do with the validity of the compromise bonds now alone in question.

When the fact is recalled, that upon the failure of the county to pay interest coupons falling due upon these bonds, suits were instituted by the defendants in error and others, in the Circuit Court of the United States, where this same defence being interposed, judgments were rendered against the county, the reason is very readily seen, why the county authorities became anxious to extricate themselves from the difficulty by a compromise, which should lessen the burden upon the county, and give a longer time to perform their engagements; and the reason is equally apparent, why the bondholders, before relinquishing their present advantage, and diminishing the amount to which they were apparently entitled,

should be positively assured that the delay and expense of litigation was at an end, and that the new engagements would be performed in good faith. Hence, the steps taken to make assurance doubly sure, which have already been enumerated. In effect, they enabled the county officers to represent to the bondholders, that they had been fully empowered by the Legislature to refund their existing indebtedness, at a rate of interest not exceeding six per cent., by a new issue of coupon bonds, equal in amount to such indebtedness and interest, payable not exceeding twenty years from their date, to be substituted in the place of, and exchanged for, bonds then outstanding, whenever such substitution and exchange could be effected ; and that by the express provisions of the law, all prior bonds which had been held valid by any state or Federal Court in Nebraska, constituted a bonded indebtedness within the meaning of the act.

That the county was dispensed from any obligation to submit the proposition to issue the refunding bonds to a vote of the electors, and would be valid "irrespective of the fact that said indebtedness exceeds ten per cent. of the present valuation of the property of the county."

That the refunding bonds, necessary to accomplish the foregoing purpose, having been fixed upon by the Com missioners, and duly signed by the county officers, and the seal of the county affixed thereto, being presented to the auditor and secretary of state for registration, and the endorsements thereon required by law of them, and they hesitating to perform those duties, the county had promoted a proceeding in mandamus to compel them to do so, in the Supreme Court of the State ; in which that Court had held the proposed bonds legal and valid, and had peremptorily ordered those officers to register the bonds, and place the required certificates on them, which was immediately done and the bonds thereby perfectly executed.

In this condition of affairs, the county authorities were enabled to propose to the defendant in error, and others similarly circumstanced, that if they would deliver up the bonds and coupons they held, to be cancelled and destroyed, and would satisfy the judgments rendered by the Circuit Court on some of the overdue coupons, the county would deliver to them, as a complete compromise and settlement of all controversies and disputes between them, refunding bonds to the amount of its indebtedness on the prior bonds, due in twenty years from July 1, 1882, bearing, however, but six per cent. interest, and payable at the election of the county in ten years.

This offer, late in the season of 1883, was accepted by the defendant in error, with the repeated verbal assurrances, and in the full faith and confidence, that it should relieve him from the expense and delay of the prosecution of a writ of error upon his judgment. This is shown by the affidavits of Woolworth, Glidden, and Wright, found on pages 83, 84, 85, 86, 87, 88, 89, 90 and 91 of the printed Abstract and Brief.

He then executed and delivered to the county, together with all the original obligations, a receipt in full settlement and satisfaction of the judgment now sought to be reviewed, and received the bonds now in question.

If all this is unavailable to end litigation, and settle the rights of parties, it must be confessed that the united efforts of the state and the county, acquiesced in and acted upon by the creditors of the latter, are unsufficient to accomplish objects plainly in the interest and to the credit of the county. And if all this may at any time be ripped up and discarded, it may as well be further confessed, that the very healthy and equitable doctrines of estoppels *in pais*, have lost most of their original significance, and have shrunk into very small proportions.

It is quite immaterial whether the recitals and certificates inserted in or attached to the bonds, would preclude going back to the actual facts connected with this issue of bonds, since the actual facts are exactly what they were represented to be.

But that, for the purpose of invalidating these bonds, it is allowable to go back and search for some defect in the original bonds, which was not developed for a year after these transactions were, in good faith, closed, and consisted only in a small amount of excess, the effect of which was very debatable,—would, as it seems to me, be a total overthrow of the objects and purposes of those doctrines.

Such an attempt receives no support whatever from the Dixon County case relied upon by the plaintiff in error. The very point upon which that decision turned, was that no authority or tribunal, constituted by law, was authorized to determine the facts upon which the validity of the bonds depended, and upon which conclusive reliance might be placed by a purchaser. But assuredly no one will question, that the Supreme Court of a State, invested with complete jurisdiction to determine all questions arising under the Constitution or laws of the State, as applied to facts in cases regularly brought before them, are competent to determine everything legitimately belonging to a controversy; nor that their determinations are final and conclusive, and may be safely relied upon by the outside world. The peace and safety of every community depends upon a rigid adherence to this doctrine.

Now, the Supreme Court of Nebraska, long before these compromise bonds were taken by the plaintiff in error, did act directly upon them, and did determine that they were legal and valid, and ordered subordinate officers to complete their execution, in order that they might be used as directed by the laws, and as they were actually

used in effecting the compromise with the creditors of this county. The certificate that they were issued in conformity to the laws of that State, was, in legal effect, the certificate of that Court, executed by subordinates under its order and authority, and importing an absolute verification of the law and facts necessarily involved in the judgment rendered.

That judgment was not subject to review and remains in force to this day: and I know of no decision of this Court, which would in the least detract from its force as a construction of the Constitution and laws of a State, made by its Court of last resort, or from the absolute verification of the facts necessary to the judgment it rendered.

Much less do I know of any principle, which would allow a party, at whose instance such a judgment was rendered, and who made use of it to induce another to relinquish his rights, to impair its authority for the purpose of enabling him to escape from his engagements.

At the time all these transactions took place, without a pretence of fraud or unfairness, and with the utmost deliberation, there was concurring judicial assent to the validity of both series of bonds. The Circuit Court had held the old bonds valid, and had rendered judgments upon the overdue coupons; and the Supreme Court of the State had held the compromise bonds valid, and ordered them completed to be used and go into circulation.

Under such circumstances, it very rarely happens that a Court will give such a retroactive effect to its decisions, as to impair important rights acquired upon the faith of prior judicial sanction.

The case of *Orleans* vs. *Platt*, 99 U. S. R. 676, is full of instruction upon that subject. It was there held, that the order of a County Judge, under the laws of New York, allowing a township to subscribe to the stock of a railroad, and issue bonds in payment, was conclusive until reversed; and although the order was reversed by the

Court of Appeals, and for a reason which would have precluded any subscription—yet, that bonds issued before the reversal might be enforced against the township.

But, without pursuing this subject further, it seems to me plain, that this county, after the advantages it secured by the compromise, is not entitled to go back upon all it has said and done, and by the direct sanction of the State, to bring it about, and revive controversies which it was intended should forever be set at rest by it.

The judgment of the Supreme Court has completely supplied the missing link found in the Dixon County case; and subsequent legislation has defined with the utmost clearness, what evidence the commissioners should act upon, in determining what indebtedness should be recognized as valid and carried into the compromise bonds. They have literally followed these orders and prescriptions of the State, and if there is any power on earth that can rightfully annul or disregard what has thus been ordered and prescribed, in respect to a matter of purely local concern, it is wholly unknown to me.

THIRD.

In some respects, very closely allied to the doctrine of *Estoppel*, and yet, standing upon its own ground, and having its own characteristics, is the doctrine of the law relating to contracts for the settlement and compromise of controversies between parties.

After, however, what has been so fully and satisfactorily said by Mr. Woolford in his brief, and the numerous authorities he has brought to the attention of the Court, I need add very little upon the subject. The elementary books and adjudged cases speak an almost uniform language in regard to such contracts, and fully justify Mr. Parsons in saying, that, "With the Courts of this country, the prevention of litigation is not only a sufficient, but a highly favored consideration; and no

investigation into the character or value of the different claims submitted, will be entered into for the purpose of setting aside a compromise"—1 Pars. on Cont. 365.

From the days of the historical controversy about boundaries, between *Penn* and *Lord Baltimore*, decided by Lord Hardwicke, (1 Ves. Sr. 444), to the present time, this doctrine has been adhered to with unyielding tenacity.

In that case it was held, that while nothing valuable was given on the face of the articles as a consideration, yet, the settling of boundaries, *and peace and quiet*, formed a mutual consideration on each side, and in all cases make a consideration to support a suit in chancery for the performance of the agreement for settling the boundaries.

In the case of *Hoge vs. Hoge*, 1 Watts 216, the Court held, (C. J. Gibson delivering the opinion) that a compromise of a doubtful title was binding upon the parties, although ignorant of their rights, unless vitiated by fraud sufficient to avoid any other contract. And in *O'Keson vs. Barclay*, 2 Penn. R. 531, the same Court held a promise to pay a sum of money, for the compromise of a slander suit, binding upon the party making the promise, although the words laid in the declaration were not actionable. But in this case, no possible question of an adequate consideration could arise, as the defendant in error relinquished a present right to enforce the judgment he had recovered, and put the amount of it on a long credit; reduced the interest he was to receive on the old bonds by nearly one-half; and extended the time for payment of the principal nearly eight years beyond that stipulated in the old bonds, besides detaching from the new bonds two coupons from each, "as per agreement made on settlement," as expressed in the terms of settlement found on page 47 of the Brief and Abstract.

Any or all of these concessions made to the debtor, it has been constantly held, would have constituted a sufficient consideration to uphold any engagements on his part. I do not care to extend remarks upon the power of the county authorities to make this compromise and settlement. I fully agree that they had this power as incidental to their general authority over the business and pecuniary interests of the county; to make contracts, sue and be sued, etc. To deny it, would be to compel the counties to run the gauntlet of litigation upon every claim made upon them, however unjust a defense might be, or ruinous to their interests.

But I am wholly at a loss to conceive what reason could be given for denying them the specific authority conferred by the Acts of 1877 and 1883, which has been literally followed through all the proceedings, resulting in the issue and acceptance of the compromise bonds.

A county is not *imperium in imperio* in any sense; but merely a local subdivision of the state, and as such, subject to the control of the law-making power. Whatever that power (within constitutional limits) judges necessary, expedient or just to be done, it may authorise or require the local administrations to perform, prescribing such rules and regulations for their guidance as should be thought necessary and proper.

The Legislature found sundry counties indebted for aid furnished to works of internal improvement; defaulted on the high interest they were to pay, sued, and judgments recovered against them. It would be a strange imbecility to fasten upon a state government to say, that it could not authorise such counties to compromise with their creditors, giving them longer bonds, at a lower rate of interest, and that there might be included in such compromise, all bonds, which had been judicially declared valid by a Court of competent jurisdiction. And it would be passing strange, if a creditor having claims

exactly corresponding with those described in the legislative enactments, should, at the solicitation of the county authorities, satisfy his judgment and deliver up his obligations, taking the compromise bonds for them, be subjected to have the whole arrangement blown up, because the bonds he originally held, were afterwards found not to be as valuable as they were then supposed to be.

I notice in the brief of the learned counsel for the plaintiff in error, (which has just now come to my hands) that the position is taken, that these compromise bonds can derive no support from the act of 1883, as they were issued before its passage; and that they cannot stand under the act of 1877, as that only extended to such bonds as "remain and are a legal liability against such county." This position is founded in part upon an error of fact, and in whole upon an error of law.

It is very true that the bonds are dated July 1st, 1882, although they were not authorised by the commissioners until the 14th of August following, and being afterwards prepared and signed by the county authorities, remained in the hands of the state officers, until after the 10th of February, 1883, when these officers were required by the Supreme Court to complete their execution, by placing the requisite certificates on them. But they were not issued, and did not take effect, in any legal sense, until they were accepted by the creditors, and the old bonds delivered up, which was months after the passage of the act of 1883.

I do not think the act of 1883, at all indispensable to the validity of the compromise bonds, nor did the Supreme Court, which acted upon them and affirmed their validity a few days before the passage of that act. But that the act was passed more clearly to define the powers and duties of the commissioners, and that every one dealing with them after the act took effect, had a right

to rely upon the authority it gave, and the rule of evidence it prescribed, is a very clear proposition to my mind.

But if the act of 1877 alone is regarded, and the words relied upon are properly construed and applied, the result is equally certain and conclusive. The act relates to bonds theretofore issued to aid in works of internal improvement, bearing 10 per cent. interest, "which still remain unpaid, and remain and are a legal liability against such county." The act can refer to but one of two periods of time—either to the date of its passage, or the time when the commissioners should act and take up the old bonds and give the new ones to the creditor. Literally the date of the act is most clearly indicated, but let it be the time when the commissioners act—what was there at either time to impeach the validity of the original bonds of the county? What is there now, except a precedent furnished by a decision upon like bonds of another county, held by other parties, which were never compromised, and none of the considerations which I have now presented, were before the Court or considered.

So far from there being anything, at the time this compromise was effected, and the judgment satisfied, and the old obligations given up, to detract from their legality, it then stood established, by a Court of very high authority, that they were perfectly legal and valid, and the Legislature of the state had provided that such determination should be conclusive of the right to refund such bonds. It would violate every principle, belonging to the law of settlements and compromises, to allow such afterclaps to overthrow them; and hence the stubborn principle of the law, that "no investigation into the character or value of the claims submitted will be entered into," and, in the absence of fraud, facts as they existed at the time can alone be regarded. Any number of deci-

sions which may be cited in support of this proposition, and several have been by Mr. Woodworth; but I content myself with reproducing a single extract from the opinion of Mr. Justice THOMPSON, in *Bank of Georgetown* vs. *Geary*, 5 Pet. 114, where the same question was presented. He says, "to submit a subsequent judicial decision on this point in their favor, as having a retrospective effect, so as to annul a settlement or agreement made by them under a different state of things, *would be sanctioning a most mischievous principle.*"

Indeed, with such a principle established, there could be no such thing as a compromise, which ended disputes and prevented litigation. It would simply furnish a halfway house, at which they might repose, until some of the more obstinate neighbors, who should litigate a like case to the end, should have demonstrated that one or the other of them was in the wrong, when the other party could very plainly see, that he had lost by the compromise, and would demand to be rid of it, in order that he might commence the war anew.

The only reason assigned to avoid the absolute conclusiveness of the judgment of the State Supreme Court, is that the question involved is one of commercial law, involving the validity of negotiable instruments, upon which this Court is not bound by the decisions of the State Court. No decision is cited in support of so strange an application of that doctrine, and I venture to say that none can be found. The question here was, whether the paper should be completed, and made ready to be issued; and this depended upon the authority conferred upon certain public agencies of the the State of Nebraska to make and put it in circulation-a purely local matter, to be determined upon a construction of the Constitution and laws of that state. Deciding that such authority existed, the paper was issued and used for the purposes provided by the laws, and undoubtedly found its purchasers in other